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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

16 CR 246 (JSR)

5 KIAN GOHARI,

Jury Trial

6 Defendant.

7 -----x

8 New York, N.Y.
9 November 7, 2016
10 9:29 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 JORDAN L. ESTES

JASON A. RICHMAN

18 EDWARD B. DISKANT

Assistant United States Attorneys

19 GREGORY W. KEHOE

20 ILANA HARAMATI

MICHAEL BACHNER

21 Attorneys for Defendant

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(Trial resumed; jury not present)

THE COURT: All right. We received a note from juror No. 7. A copy has been given to all counsel and it is marked as jury note No. 1. It says on Friday, November 3, you showed us a picture of Dr. Ahmad. I think that he used to work at Cerebral Palsy Associations of New York State, Inc., at a clinic as a medical doctor where I work as a dental assistant. We never worked together at the same exam room. We did not communicate with each other because of our specialties.

Sincerely yours, Zinaida Zlotnik.

I don't see any reason to take any action, but does any counsel disagree?

MR. KEHOE: No, your Honor, other than maybe the calendar references the wrong date. It's either Thursday, the 3rd, or Friday, the 4th. It doesn't make any difference.

THE COURT: I think it was the picture, if I recall, was Friday the 4th.

MR. KEHOE: I think it was. And we have no.

MS. ESTES: We don't think we need.

THE COURT: Okay. Very good.

Have you worked out the stipulations?

MR. KEHOE: Yes, your Honor.

THE COURT: Okay. So let's take now any motions that anyone wants to make at the close of the government's case.

MS. ESTES: Your Honor, if I may, we did want to

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1 actually put on these two exhibits through the witness again,
2 the summary witness. They will be very short, like ten
3 minutes.

4 THE COURT: Okay. Then let's forget about the motions
5 for now. We'll take them up at the side bar. Let's get the
6 jury in. Get the witness on the stand.

7 (Continued on next page)

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1 (Jury present)

2 THE COURT: So, ladies and gentlemen, I see the
3 competition is heating up. Well, juror No. 11 has her usual
4 superb finery. Juror No. 4 is wearing a very nice color dress.
5 And juror No. 5 has this really quite stunning scarf. And
6 alternate No. 3, not about to be outdone, has a multicolored
7 shirt. So I don't know. It's beyond my ability to make a
8 judicial decision here.

9 So, by the way, juror No. 7, thank you very much for
10 bringing the matter you brought to our attention. Neither
11 counsel nor I see any problem, but we appreciate your bringing
12 it to our attention.

13 All right. We have a short bit more of the
14 government's case which we'll take right now.

15 MS. ESTES: Your Honor, the government would first
16 like to read a stipulation into the record regarding the tax
17 return exhibits that were submitted on Friday.

18 It is hereby stipulated and agreed that Government
19 Exhibits 1200, 1201, 1202, and 1203, including all parts and
20 subdivisions thereof, are true and correct copies of documents
21 submitted to the IRS by or on behalf of the partnership Afam
22 Pharmacy Associates LLC for the tax years 2011, 2012, 2013, and
23 2014, respectively.

24 Government Exhibit 1204, including all parts and
25 subdivisions thereof, is a true and correct copy of a draft tax

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Aranaga - direct

1 return in the name of the partnership Afam Pharmacy Associates
2 LLC for the tax year 2015.

3 Government Exhibits 1205, 1206, 1207, and 1208,
4 including all parts and subdivisions thereof, are true and
5 correct copies of documents submitted to the IRS by or on
6 behalf of Kian D. Gohari, the defendant, for the tax years
7 2011, 2012, 2013, and 2014, respectively.

8 Finally, Government Exhibit 1209, including all parts
9 and subdivisions thereof, is a true and correct copy of a draft
10 tax return in the name of Kian D. Gohari, the defendant, for
11 the tax year 2015.

12 Your Honor, permission to approach the witness?

13 THE COURT: Yes.

14 AMBAR ARANAGA, recalled,

15 called as a witness by the Government,

16 having previously been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. ESTES:

19 Q. Good morning, Ms. Aranaga. I've handed you what's been
20 marked for identification purposes as Government Exhibit 919.

21 Do you recognize this document?

22 A. Yes, I do.

23 Q. How do you recognize this?

24 A. This is geospatial plotting map that I created plotting
25 patient addresses for a certain number of patients.

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Aranaga - direct

1 Q. Does it fairly and accurately summarize information
2 contained in Government Exhibits 101 and 102?

3 A. Yes.

4 MS. ESTES: Your Honor, the government offers
5 Government Exhibit 919.

6 THE COURT: Any objection?

7 MR. KEHOE: No objection, your Honor.

8 THE COURT: Received.

9 (Government's Exhibit 919 received in evidence)

10 MS. ESTES: Permission to publish?

11 THE COURT: Yes.

12 Q. Ms. Aranaga, I'd like to walk through this document
13 briefly. Turning to the blue marker on the document, what does
14 that represent?

15 A. That is the plot for Afam Pharmacy at 5207 Church Avenue in
16 Brooklyn, New York.

17 Q. And what do the yellow markers represent?

18 A. Those are points that correspond to addresses for patients
19 that were reported.

20 Q. And so turning to the yellow markers, which patient lives
21 farthest from the pharmacy?

22 A. Robert Hespeth, who used three different addresses, but one
23 in particular -- it was out in Queens even though it was
24 reported Brooklyn.

25 Q. As to the next farthest, who was that patient?

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Aranaga - direct

1 A. Ben Darin.

2 Q. And where was his address approximately?

3 A. In Jamaica.

4 Q. Which patient lived closest to the pharmacy?

5 A. Eugene Seaman.

6 Q. Approximately how close did he live?

7 A. Within a 1-mile radius.

8 Q. How many patients lived within a 1-mile radius of the
9 pharmacy?

10 A. Just one.

11 Q. And who was that?

12 A. Eugene Seaman.

13 MS. ESTES: Your Honor, permission to approach?

14 THE COURT: Yes.

15 Q. Ms. Aranaga, I handed you what's been premarked for
16 identification purposes as Government Exhibit 921. Do you
17 recognize this document?

18 A. Yes, I do.

19 Q. How do you recognize it?

20 A. This is a chart that was created showing the patient
21 prescription totals, the amounts paid by Medicaid.

22 Q. Does it fairly and accurately summarize information
23 contained in Government Exhibits 201 through 219?

24 A. Yes, it does.

25 MS. ESTES: Your Honor, the government offers

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Aranaga - direct

1 Government Exhibit 921.

2 MR. KEHOE: No objection, Judge.

3 THE COURT: Received.

4 (Government's Exhibit 921 received in evidence)

5 MS. ESTES: Permission to publish?

6 THE COURT: Yes.

7 Q. Ms. Aranaga, you said this contained prescription totals.

8 Relating to what pharmacy?

9 A. Afam Pharmacy.

10 Q. Let's just walk through a few of these very briefly.

11 What's the total for Alberto Nazario?

12 A. \$47,999.52.

13 Q. And for Tonya Freeman?

14 A. \$5,356.44.

15 Q. And for Darin Ben or Ben Darin?

16 A. \$87,251.25.

17 Q. And let's just skip down a little to Willie Johnson.

18 A. \$54,920.69.

19 Q. For Sheri Bowen what's the total?

20 A. \$31,838.55.

21 Q. Let's look at two more. For Wilfredo Stretz what's the
22 total?

23 A. \$32,982.34.

24 Q. And for Gilberto Cabrera what's the total?

25 A. \$17,341.70.

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Aranaga - cross

1 Q. What's the total amount of these prescriptions for all of
2 these patients listed here?

3 A. \$451,360.27.

4 MS. ESTES: No further questions.

5 MR. KEHOE: Thank you, your Honor.

6 Ms. Bustillo, could we put 920.

7 CROSS-EXAMINATION

8 BY MR. KEHOE:

9 Q. 920, the chart that you just had, ma'am, 921, I apologize.
10 This 451,000 plus, what does that percentage, what was the
11 percentage of total sales in Afam Pharmacy during that three
12 plus year period?

13 A. I didn't calculate that.

14 Q. So you don't know if that is a minuscule amount or a large
15 amount, do you?

16 A. Comparatively, no.

17 Q. And if we -- you gave us a chart of various patients in
18 919. Can we go back to 919. Now, did you plot other patients
19 besides these individuals as to how far they were away from the
20 Afam Pharmacy?

21 A. No. The list of patients was provided by the U.S.
22 Attorney's Office.

23 Q. So the U.S. Attorney's Office didn't ask you to look at
24 other patients in the pharmacy to see if they were yet further
25 away from these individuals, did they?

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1 A. No.

2 Q. And as a consequence you just didn't do that?

3 A. Actually, I plotted quite a few, but they were interested
4 in this particular set.

5 Q. So the government wanted you to just do these?

6 MS. ESTES: Objection.

7 THE COURT: Sustained.

8 MR. KEHOE: Thank you very much. No further
9 questions.

10 THE COURT: Anything else?

11 MS. ESTES: No, your Honor.

12 THE COURT: You may step down. Thank you very much.

13 THE WITNESS: Thank you, sir.

14 (Witness excused)

15 THE COURT: Anything else from the government?

16 MS. ESTES: No, your Honor.

17 THE COURT: Does the government rest?

18 MS. ESTES: Yes, your Honor.

19 THE COURT: All right. Counsel, come to the side bar.

20 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Any motions from the defense?

3 MR. KEHOE: Yes, your Honor, make a Rule 29 motion.

4 The evidence is insufficient to sustain a conviction, Judge.

5 Central to this entire conspiracy both in Count One
6 and Count Two is the testimony of Gilberto Cabrera. Gilberto
7 Cabrera testified that Danny Gohari told him to bring all of
8 the scripts, prescriptions, pardon me, to his pharmacy and then
9 as a consequence he would fill his oxycodone scripts. So that
10 was the central feature of this conspiracy. In fact, as
11 Mr. Winsley, the government's witness, noted, that telling an
12 individual to bring his or her scripts, all of his or her
13 scripts to the pharmacy is something that they are instructed
14 to do and taught to do in the pharmacy. It completely
15 undercuts this idea coming from Cabrera that the reason why
16 Gohari asked to bring all these scripts was for some illegal,
17 nefarious reason. The reason it was done was that is the way
18 pharmacists are trained, as Mr. Winsley said, and it completely
19 vitiates this conspiracy outlined by the government.

20 THE COURT: So my recollection is that Mr. Cabrera,
21 among much else, testified that he had an agreement with the
22 defendant whereby he would -- the defendant would fill
23 questionable oxycodone prescriptions in return for Mr. Cabrera
24 bringing him lucrative high-end prescriptions. Wasn't there
25 testimony to that effect?

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1 MR. KEHOE: If we stay with that one point where he
2 said that the quid pro quo in his mind was that Danny said to
3 him bring me these prescriptions, bring me all of your
4 prescriptions.

5 THE COURT: I don't think that's my recollection.

6 In any event, what does the government have to say
7 about this?

8 MS. ESTES: Your Honor, there's ample evidence that
9 there was a conspiracy to distribute medically unnecessary
10 oxycodone. Mr. Cabrera testified about this agreement where he
11 dispensed oxycodone in exchange for getting the high-end
12 medications. He also testified that the defendant remarked on
13 occasions about he must be making good money off the oxycodone,
14 which suggests he knew that it was medically unnecessary.

15 There's also testimony that the defendant never asked
16 about these patients' pain, that he wasn't inquiring about why
17 they needed these oxycodone pills; and there was expert
18 testimony that a reasonable pharmacist would know these are
19 medically unnecessary.

20 THE COURT: Yes, I think there is enough to go to the
21 jury. The motion is denied.

22 (Continued on next page)
23
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Quintero - direct

1 (In open court)

2 THE COURT: All right. Ladies and gentlemen, the
3 defendant does not have to put on any case because the burden
4 is always on the government to prove its case beyond a
5 reasonable doubt. However, the defendant in this case has
6 decided to call a number of witnesses.

7 So please call your first witness.

8 MR. KEHOE: Yes, your Honor. The defense calls Ronald
9 Quintero.

10 THE DEPUTY CLERK: Is someone getting this person?

11 THE COURT: It's the defense counsel's job to get the
12 witness.

13 MR. KEHOE: Ms. Haramati is going to get him.

14 RONALD GARY QUINTERO,

15 called as a witness by the Defendant,

16 having been duly sworn, testified as follows:

17 MR. KEHOE: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MR. KEHOE:

20 Q. Mr. Quintero, what do you do for a living?

21 A. I'm a certified public accountant. I get involved in
22 various other financially oriented matters, operationally
23 oriented matters, and forensic accounting.

24 Q. What does that mean when you say you get involved in them,
25 what in fact do you do?

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Quintero - direct

1 A. As an independent professional advisor, I will investigate
2 a variety of different matters on behalf of my clients, put
3 together analyses, render advice on behalf of my clients. And
4 my clients are very wide ranging. I have served on over a
5 thousand engagements during my 41-year professional career.

6 Q. And your clients, do they include anybody in working -- any
7 entity within the United States government?

8 A. Yes, sir, several entities.

9 Q. And what would those entities be?

10 A. Includes the United States Department of Justice, the
11 Federal Deposit Insurance Corporation, the United States
12 Department of Agriculture, as well as others.

13 Q. And, sir, how long have you been doing this work?

14 A. Since 1975.

15 Q. And, by the way, I know your name is Ronald Quintero. Do
16 you work for a particular entity or company?

17 A. Yes, sir, I have two firms -- Chartered Capital Advisors,
18 which provides financial advisory services; and RG Quintero and
19 Company is a CPA firm, not that we're doing anybody's audits or
20 tax returns, but rather for certain types of projects, such as
21 ones that I've done for the Department of Justice, I'm
22 technically hired as a CPA.

23 Q. And can you give us an idea of your educational background,
24 Mr. Quintero?

25 A. Yes, sir. I have an undergraduate degree in economics and

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Quintero - direct

1 Spanish literature from Lafayette College. I have a master's
2 degree in accountancy from the New York Stern School of
3 business. I have an advanced professional certificate, which
4 is an intermediate degree between a master's degree and a PhD.
5 My field of study was investment management. I also earned
6 that from NYU.

7 I have ten professional licenses. I'm a certified
8 public accountant, certified management accountant, certified
9 fraud examiner. I'm AICPA certified in financial forensics. I
10 am a chartered financial analyst, certified financial planner.
11 I am AICPA accredited in business valuation. I am a certified
12 insolvency and restructuring advisor and certified turnaround
13 professional.

14 In connection with all these designations I have
15 annual professional continuing education requirements of up to
16 40 hours per year. I've always vastly exceeded the annual
17 requirements since I earned my first professional designation
18 as CPA in 1977.

19 Q. Now, sir, you were hired in fact to work on this particular
20 case, and just by way of background, have you and I worked
21 together before?

22 A. Yes.

23 THE COURT: Sustained.

24 MR. RICHMAN: Thank you, your Honor.

25 Q. Sir, are you being compensated for your work at an hourly

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Quintero - direct

1 rate?

2 A. I am.

3 Q. What is that rate?

4 A. \$510.

5 Q. Now, you noted that you are working for the defense in this
6 case and you've also worked for the government?

7 A. Yes, sir, I have.

8 Q. And are you planning to testify for the government at any
9 time in the near future?

10 A. Yes, sir, on Wednesday.

11 Q. Now, sir, you noted a variety of enterprises that you have
12 examined. Do any of those enterprises that you've examined in
13 the past involve the medical field or the pharmacy field?

14 A. More than 70 of them.

15 Q. And in what capacity have you looked at those?

16 A. For applying the functional skills that I have ranging from
17 advisory service to fraud investigations to working in valuing
18 the businesses, preparing financial forecasts. So the basic
19 functional skills I deliver have been applied across a wide
20 range of entities within various aspects of the -- either the
21 pharmacy business or pharmaceutical products or insurance and
22 managed care.

23 Q. Now, Mr. Quintero, let's turn our attention to this case
24 particularly and you've worked with Afam Pharmacy. What were
25 you asked to do?

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Quintero - direct

1 A. I reviewed the complaint and the indictment. I was
2 provided a variety of information, most of which was produced
3 by the U.S. government in this matter. And after having
4 reviewed it, I was asked to provide relevant financial analyses
5 that would pertain to this case.

6 Q. And, sir, again, you examined all of that item and you came
7 up looking at the numbers. Did those items include the tax
8 returns of Afam and individually Mr. Gohari?

9 A. Yes, that was included.

10 Q. Now, based on your work, sir, did you develop a series of
11 charts and -- summary charts that you presented?

12 A. I did.

13 Q. And let's just go through those and let me go through the
14 basis of those and then we'll talk about them one by one. If
15 we could put on the screen Defendant's Exhibit 81.

16 MR. RICHMAN: On whose screen?

17 Your Honor.

18 MR. KEHOE: Just on the screen here.

19 May I approach, Judge?

20 THE COURT: Yes.

21 Q. Taking a look at, Mr. Quintero, Defendant's Exhibit 81, and
22 putting that -- did you put that particular demonstrative
23 exhibit together?

24 MS. ESTES: Objection, your Honor, leading.

25 THE COURT: Overruled.

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Quintero - direct

1 A. Yes, sir, I created this exhibit.

2 Q. And looking at that exhibit, did you examine the Government
3 Exhibits, the Medicare billings, Government Exhibit 322 to 325?

4 MS. ESTES: Objection, your Honor.

5 THE COURT: Ground?

6 MR. RICHMAN: Leading.

7 THE COURT: It is leading, but it's leading for a
8 totally foundational purpose. Overruled.

9 MR. RICHMAN: Thank you.

10 A. Yes, sir. I developed this from the sources that are so
11 indicated, that being the Medicaid database that was provided.

12 THE COURT: I think the answer to the question is yes.

13 THE WITNESS: Yes, sir.

14 THE COURT: Let's move along.

15 MR. KEHOE: Yes, your Honor. I'm just trying to get
16 through these quickly.

17 Q. You also looked at the pharmacy tax return Government
18 Exhibit 202 to 204?

19 A. I did.

20 Q. Now let's turn, we can put Defendant's Exhibit 82 on the
21 screen.

22 MR. KEHOE: If I may, Judge, to expedite this, can I
23 just give this stack of documents to Mr. Quintero? It just
24 will expedite matters.

25 THE COURT: Yes.

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Quintero - direct

1 Q. Now, just looking at Government Exhibit 82, sir, did you,
2 putting that chart together, did you use the pharmacy tax
3 returns, again, Government Exhibits 1202 to 1203, 1200 to 1203?

4 A. I'm unsure as to the exhibit numbers of the tax returns,
5 but I prepared this exhibit based on the tax returns of Afam
6 for the periods 2011 through 2015.

7 Q. Okay. Let's turn our attention to Defendant's Exhibit 83.
8 Do you have that before you?

9 A. I do.

10 Q. Is Defendant's Exhibit 83, that chart, is that based on the
11 pharmacy tax returns you just alluded to?

12 A. Yes, sir.

13 Q. How about Defendant's Exhibit 84?

14 A. I prepared this document as well.

15 Q. Did you base that on the Medicare billings, Government
16 Exhibit 322 to 325, as well as the Medicaid database
17 Government, Exhibit 300 to 317?

18 A. I prepared this based on the Medicaid database. Again, I'm
19 uncertain as to the exhibit numbers for the documents that you
20 just referred to.

21 Q. Let's turn our attention to Defendant's Exhibit 85.
22 Defendant's Exhibit 85, is that likewise based on the pharmacy
23 tax returns and the Medicaid database?

24 A. Yes, sir, it is, and I prepared this document.

25 Q. And Government Exhibit 86, Government Exhibit 86, excuse

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Quintero - direct

1 me, Defendant's Exhibit 86, is that likewise based on the
2 Medicaid database and the patient profiles that you examined?

3 A. Yes, sir, it is.

4 Q. Let's turn our attention to Defendant's Exhibit 87. Is
5 that likewise based on the Medicaid database, the patient
6 profiles, and the pharmacy tax returns?

7 A. Yes, sir.

8 Q. And Defendant's Exhibit 88, is that likewise based on the
9 Medicaid database in evidence?

10 A. Yes, sir.

11 Q. 89?

12 A. This one is as well.

13 Q. That's likewise based on the Medicaid database in evidence.
14 Excuse me, 91?

15 A. Excuse me, sir. On 89, that is based on the patient
16 profiles and the crystal database.

17 Q. Thank you. And 91, is that likewise based on the Medicaid
18 database?

19 A. Yes, sir, it is.

20 Q. And Defendant's Exhibit 92?

21 A. Yes, sir, it is.

22 MR. KEHOE: Your Honor, at this time, as a
23 demonstrative aid to the jury, before we go through the
24 testimony on this the defense would like to exhibit Defendant's
25 Exhibit 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, and 92.

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Quintero - direct

1 MR. RICHMAN: No objection, your Honor. Thank you.

2 THE COURT: Received.

3 (Defendant's Exhibits 81, 82, 83, 84, 85, 86, 87, 88,
4 89, 91, and 92 received in evidence)

5 THE COURT: Ladies and gentlemen, you should
6 understand with respect to these charts -- I think as I recall
7 there were some similar charts from the government -- these are
8 summaries of data from exhibits, underlying exhibits that are
9 already in evidence. So they may be a useful summary for you,
10 but if you have any question about them, you'll have to look at
11 the underlying evidence that's also part of what you will be
12 receiving.

13 Go ahead, counsel.

14 MR. KEHOE: Thank you, your Honor.

15 Q. Mr. Quintero, I'd first like to, if we can turn our
16 attention first to Exhibit 81, and if we could put Exhibit 81
17 on the screen. Now, explain to the jurors exactly what 81 is.

18 A. Exhibit 81 reveals the total sales of Afam between 2012 and
19 2015, breaking it down into two payer sources. The blue boxes
20 are the revenues that were funded or the sales that were funded
21 by Medicaid. The red boxes contain the sales that were funded
22 by other payer sources such as Medicare, third party insurance
23 companies, or individuals paying out of their own pockets.

24 Q. Now, sir, just before we get into this, in this Afam
25 Pharmacy, did you take a look at in your examination of the tax

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Quintero - direct

1 returns information concerning this pharmacy as to whether or
2 not it was a limited liability company, a partnership, etc.?

3 A. Yes, sir, I did.

4 Q. And what did you conclude based on that?

5 A. It is a limited liability corporation --

6 MR. RICHMAN: I apologize, your Honor. We would
7 object subject to the Court's prior.

8 THE COURT: Which of my prior rulings are you
9 referring to?

10 MR. RICHMAN: Your Honor, if we could briefly.

11 THE COURT: I have my prior rulings. Which one are
12 you referring to?

13 MR. RICHMAN: Nothing from the order, your Honor, but
14 from the appearance that predicated the order.

15 THE COURT: From the?

16 MR. RICHMAN: The hearing concerning this testimony
17 that came before.

18 THE COURT: You have something from the transcript?

19 MR. RICHMAN: I think I could show you something
20 specific, your Honor.

21 Your Honor, our understanding was that the witness
22 would be testifying as a summary witness concerning some of the
23 numbers underlying his analysis. This testimony seems to veer
24 away from that cabined testimony.

25 THE COURT: Well, first, I think the rulings of the

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Quintero - direct

1 Court were quite clear as to what he could or could not testify
2 to, and I don't think it addressed that issue. Second, this
3 was opened in prior testimony, concededly by defense
4 cross-examination, but without objection. So I will within
5 narrow limits allow this. Overruled.

6 MR. RICHMAN: Thank you, your Honor.

7 MR. KEHOE: Thank you, your Honor.

8 Q. Could you proceed on that score?

9 A. Yes, sir. Afam is a limited liability corporation which is
10 taxed not directly, but rather the taxable income of the
11 limited liability corporation, or LLC, is paid personally by
12 the members or partners in the limited liability corporation.

13 Q. So based on that, sir, when you say -- what about with the
14 individual partners, are they taxed thereafter?

15 A. Yes. For all intents and purposes, all of the taxable
16 income of the limited liability corporation is untaxed at the
17 corporate level. It's rather taxed at the partnership level.
18 So they personally pay the taxes based on any income realized
19 by the corporation.

20 Q. And was this information that you culled from the tax
21 returns for the partnership and for Mr. Gohari personally?

22 A. Yes, sir.

23 Q. Now, from those same tax returns, did you also understand
24 when Afam Pharmacy opened, the year?

25 A. Yes, sir.

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Quintero - direct

1 Q. And what year was that?

2 A. 2010 September.

3 Q. Now going back --

4 A. Excuse me. More precisely, it was incorporated on that
5 day. The tax return doesn't say when the first day of
6 operations was.

7 Q. I stand corrected. Thank you.

8 Going back to Defendant's Exhibit 81, if we can.
9 These are Medicaid, non-Medicaid sales for the pharmacy for the
10 operative time frame?

11 A. Yes, 2012 through 2015.

12 Q. So if we take a look at this, for instance, in 2013, there
13 is non-Medicaid sales of 779; is that right?

14 A. That is correct.

15 Q. And Medicaid of a million?

16 A. Approximately, yes, sir.

17 Q. If we turn to 2014, it's 3,432,335 for non-Medicaid, and
18 \$1,683,918 for Medicaid; is that accurate?

19 A. Yes, sir, that is correct.

20 Q. Let us turn our attention, if we may, to Exhibit 81.

21 Excuse me, 82, my apologies, Defendant's Exhibit 82.
22 Now, what is this, sir? You prepared this chart. Can you
23 explain this for the jurors?

24 A. Yes, sir. This summarizes information from the company's
25 income tax returns. It shows that over the five-year period

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Quintero - direct

1 sales grew from \$4,046,000 in 2011 to eventually 18,925,000,
2 rounded, in 2015. However, what's significant is a specialty
3 pharmacy --

4 MR. RICHMAN: Objection, your Honor.

5 THE COURT: Sustained.

6 MR. RICHMAN: Thank you, your Honor.

7 Q. Well, keep that blown up. If you could go through the
8 costs of goods sold, can you explain that next line, sir?

9 A. Yes, sir. The costs of goods sold is the cost of the
10 medications that are actually dispensed by the pharmacy, as
11 well as other products dispensed by the pharmacy.

12 MR. RICHMAN: Objection, your Honor, to this line of
13 questioning. This is going beyond the tax returns.

14 MR. KEHOE: Your Honor, if I may, I can show you the
15 tax return.

16 THE COURT: That's not the issue. Tell me where in
17 his report this appears.

18 MR. KEHOE: It would be observation three. Exhibit 5.
19 If you look under that observation, Judge, it's the bullet
20 point.

21 THE COURT: Overruled. You may testify.

22 Q. Proceed, sir.

23 A. Yes, sir. Most significantly in reviewing this financial
24 statements is not the sales --

25 THE COURT: No, that was clearly excluded.

GB7LGOH1

Quintero - direct

1 THE WITNESS: You're asking about the cost of goods
2 sold.

3 THE COURT: Let's have the last question reread.

4 (Record read)

5 THE COURT: By that I take it to mean what does this
6 line refer to.

7 MR. KEHOE: Yes, your Honor.

8 THE COURT: Not anything beyond that.

9 MR. KEHOE: Yes, your Honor.

10 A. The cost of goods sold is the cost of the pharmaceutical
11 products, in other words, the medications, and other products
12 that were sold by the specialty pharmacy.

13 Q. Now, sir, now your next line is gross profit. What is
14 that?

15 A. The gross profit is the difference between the selling
16 price of the products and the cost associated with those
17 products. So that is the net from the sales realized by the
18 pharmacy.

19 MR. KEHOE: If I may, Judge, this is Government
20 Exhibit 1200. May I approach, Judge?

21 THE COURT: Yes.

22 Q. Show you what's been received in evidence as Government
23 Exhibit 1200. And is there a line there for operating costs?

24 A. There are several lines that contain operating costs.

25 Q. Okay. And let us turn our attention back with to

GB7LGOH1

Quintero - direct

1 Defendant's Exhibit 82 on the screen, operating costs. What do
2 you mean by operating costs?

3 A. These are the costs of running the pharmacy. They include
4 salaries and wages, guaranteed payments to partners, rent, and
5 miscellaneous other expenses, such as utility costs, other
6 costs associated with running a retail establishment.

7 Q. Now, let us go down to in the tax return that the
8 government introduced into evidence, which is Government
9 Exhibit 1200, is there a line there for ordinary business
10 income?

11 A. Yes, sir, there is.

12 Q. And let's go back to your chart, Defendant's Exhibit 82.
13 Is there a line for ordinary business income?

14 A. Yes, sir, there is.

15 Q. Now, there is a number of ordinary business income is
16 reflected in 2011 as 83,591. The jurors can read it. It goes
17 80,000; 104,000; 117,000; \$446,779 for 2015; is that correct?

18 A. Yes, sir, that is correct.

19 Q. What do those numbers reflect, in your chart reflect?

20 A. Those represent the taxable income and, again, that's going
21 to be charged to the members or the partners, owners, of the
22 company based on the sales that were generated by Afam over
23 this five-year period.

24 Q. Now, this is ordinary business income that is reflected for
25 Afam Pharmacy?

GB7LGOH1

Quintero - direct

1 A. That is correct, on a pretax basis.

2 Q. Do the Afam partnership tax returns reflect more than one
3 partner in this entity?

4 A. Yes, they do.

5 Q. And how many partners are there?

6 A. Three partners.

7 Q. And can you give us a percentage breakdown based on those
8 tax returns that the government put into evidence?

9 A. Yes, sir. Mr. Gohari was a 65 percent member or partner.

10 And there were two other individuals who owned a 25 percent
11 membership interest and a 10 percent membership interest,
12 aggregating 35 percent.

13 Q. Now let us continue on with the next line in your chart,
14 the percentage of net sales, and you have a line that says net
15 sales, cost of goods sold, gross profit. What is that?

16 A. The -- this, these three lines show as a percentage of
17 total sales what each of these line items amount to. So the
18 cost of goods sold says that over the five-year period,
19 approximately 92 and a half cents out of every dollar of sales
20 went to buying the applicable products that were sold. And
21 gross profit of seven and a half percent said that essentially
22 every dollar of sales that is generated, about seven and a half
23 cents is the profit or the difference between the selling price
24 and the cost of the applicable products and that seven and a
25 half percent is what's left over to operate the rest of the

GB7LGOH1

Quintero - direct

1 pharmacy.

2 Q. Now, that's a gross profit?

3 A. That is correct.

4 Q. Now if we move down again to the operating costs, take us
5 through that.

6 A. Yes, sir. The operating cost shows again as a percent of
7 sales or for every dollar of sales, if we look at the five-year
8 summary, 1.1 cents goes to salaries and wages, 1.5 cents to
9 guaranteed payments to partners, a half of a cent to paying
10 rent, and 1.7 cents to other operating expenses. So in
11 aggregate, the costs to run the pharmacy are approximately 4.9
12 cents out of every dollar in sales.

13 Q. Now let's take that down to the -- and we look at what the
14 gross profit was, line was, and then you came down to operating
15 costs. Explain to us the line ordinary business income.

16 A. Yes, sir. If we take the difference between the seven and
17 a half cents from every dollar of sales that's the gross profit
18 and the 4.9 cents from every dollar in sales that is the cost
19 to operate the pharmacy, there is 2.6 cents left over. That is
20 essentially the pretax income that the members or owners of the
21 pharmacy will be taxed personally on.

22 Q. Now, so based on this adjustment, out of every dollar, it
23 is 2.6, excuse me, 2 cents, two and a half cents is what goes
24 to the partnership?

25 A. On a pretax basis, that is correct.

GB7LGOH1

Quintero - direct

1 Q. And then, of course, when it's distributed, would it be
2 taxed for the individuals?

3 A. It would be.

4 Q. Now, the partnership itself pays a minimum amount of tax
5 too, does it not?

6 A. A very minimal amount.

7 Q. Now let's turn our attention to Defendant's Exhibit 83, if
8 we may, and, again, can you tell us what Defendant's Exhibit 83
9 is?

10 A. Yes, sir. This is the balance sheet information of Afam
11 for the five years ended December 31, 2015 based on information
12 that was reported in the company's tax returns, as well as
13 certain financial ratios during that five-year period.

14 Q. Now, just take us through there, assets. It says current
15 assets and then has a variety of items down from the assets?

16 A. Yes, sir.

17 Q. What is that?

18 A. This shows cash, the amount of cash the company had as of
19 each of the five years ended reflected in this chart; accounts
20 receivable, money that was owed to the company by various payer
21 sources such as Medicaid; inventory, so those would be the
22 pharmaceutical products and other products the company had in
23 stock as of each of these dates; other current assets, not a
24 significant number during the time period; and fixed assets are
25 in a specialty pharmacy largely the fixtures.

GB7LGOH1

Quintero - direct

1 MR. RICHMAN: Objection, your Honor. I could explain
2 at side bar.

3 THE COURT: So the testimony after the words "current
4 assets" will be stricken. The rest stands.

5 MR. KEHOE: I'm sorry, Judge. I asked the question
6 about what fixed assets were.

7 THE COURT: And he gave a lengthy answer. But if your
8 follow-up question is what are the fixed assets --

9 MR. KEHOE: I apologize, Judge. I will withdraw that
10 question.

11 THE COURT: Okay.

12 Q. Let's go down to the next part, liabilities and partners'
13 capital, what does that say?

14 A. Liabilities are obligations that the company had as of each
15 of these date to third parties. And partners' capital is
16 essentially the net worth of the company as of each of those
17 dates.

18 Q. And mind you, this is information that you obtained from
19 tax returns that are the government put into evidence?

20 A. That is correct.

21 Q. And the financial ratios, what does that mean?

22 A. These are certain ratios that are routinely looked at in
23 analyzing businesses and retail establishments.

24 Q. Now let's just go into some of your items and I ask you to
25 take a look, did you examine the volume of sales of

GB7LGOH1

Quintero - direct

1 prescriptions funded by Medicaid dispensed by Afam to the
2 alleged coconspirators during the relevant time frame?

3 A. Yes, sir, I did.

4 Q. Let's turn our attention to first Defendant's Exhibit 88.
5 Do you have that before you, sir?

6 A. Yes, sir, I do.

7 Q. And just explain to the jurors exactly -- let me withdraw
8 that question.

9 It notes at the top quarterly Afam sales to the
10 alleged coconspirators funded by Medicaid. Can you just
11 explain, did you put that on there, is that right?

12 A. Yes, I created this exhibit.

13 Q. And what did you mean by that, sir?

14 A. This exhibit shows for each of the quarters from the
15 beginning of 2012 through the fourth quarter of 2015 what was
16 both the number of prescriptions dispensed to all collectively
17 of the alleged coconspirators, as well as the dollar value in
18 total for all prescriptions dispensed on behalf of all of the
19 alleged conspirators.

20 Q. So just use one as an example for us, let's say the third
21 quarter of 2014.

22 A. Yes, sir. So on that quarter, it says that 161
23 prescriptions were dispensed and the total dollar value paid by
24 Medicaid for those 161 prescriptions amounted to \$27,251.

25 Q. That was a quarter, a three-month period of time?

GB7LGOH1

Quintero - direct

1 A. Yes, sir, as divided among 19 people.

2 Q. So when you do this, it's on a three-month basis for 19
3 people?

4 A. That is correct.

5 Q. Let's us look at the next exhibit which would be
6 Defendant's Exhibit 89.

7 A. Yes, sir.

8 Q. Now, how is that titled?

9 A. This analysis breaks it down on to a personal basis. So on
10 a per person basis, how many prescriptions were dispensed
11 during each of these quarters and what was the dollar value
12 reimbursed by Medicaid for the prescriptions on average for
13 each of the 19 people.

14 Q. So, again, let's take I think we used quarter three for
15 2014, what is that?

16 A. That indicates that on average, each of the 19 individuals
17 had eight and a half prescriptions that were filled over the
18 three-month period and the dollar value of reimbursement for
19 those eight and a half prescriptions on average was \$1,434
20 total.

21 Q. And that's for 19 people?

22 A. That is correct.

23 Q. Let us turn our attention to another item and I asked to,
24 excuse me, and if we could put on the screen Defendant's
25 Exhibit 86. Now, tell us a little bit, what is Defendant's

GB7LGOH1

Quintero - direct

1 Exhibit 86?

2 A. This is a chart that I put together that shows for each of
3 the 20 people that were at one point identified as alleged
4 coconspirators, what were the number of prescriptions filled
5 from the beginning of 2012 through October 31, 2015, what were
6 the total dollars reimbursed by Medicaid during that period for
7 each of the individuals, what do those reimbursements
8 constitute as a percentage of the total that was funded by
9 Medicaid and as a percent of the total that was paid to Afam.

10 And so substantially all the money if we look at the
11 percentages was funded by Medicaid, but a little bit of it was
12 funded either by some combination of other third payer sources
13 or by the individuals personally.

14 Q. So just juxtapose those two numbers. You have the three --
15 you were talking about \$384,426?

16 A. Yes, sir, that is correct.

17 Q. And that is the Medicaid, net sales from Medicaid?

18 A. Yes, sir, that was funded by Medicaid.

19 Q. And if we could go just one, two, three, four columns over
20 to the, excuse me, \$452,854.33, that is for all sales?

21 A. That's correct, including sales that were not funded by
22 Medicaid.

23 Q. And what is the time frame for this?

24 A. This is over a period of just less than four years.

25 Q. So you have the chart January 1, 2012, to October 31, 2015?

GB7LGOH1

Quintero - direct

1 A. Yes, sir.

2 Q. Let's go to, if I may, Defendant's Exhibit 84. This notes
3 at the top, shares of Afam sales funded by Medicaid comprised
4 of sales to alleged coconspirators 2012-2015. What does this
5 reflect?

6 A. This chart compares the total sales that were funded by
7 Medicaid on behalf of parties other than the alleged
8 coconspirators, and that's the blue bar, as compared to, if you
9 can see it, the little red bar is the sales funded by Medicaid
10 associated with prescriptions filled on behalf of the alleged
11 coconspirators.

12 Q. So let me back this up if I can. The blue in for instance
13 2012 is 1,989,282. Is that the -- reflect the Medicaid sales
14 for all of the other patients coming in the pharmacy other than
15 the coconspirators?

16 A. That is correct.

17 Q. And the coconspirators are the red line, the 103,176?

18 A. That is correct.

19 Q. And if we move to say to the right hand, it's 2015, we have
20 sales of all Medicaid sales for this three-year-plus period is
21 eight million, nine hundred and eighty-five thousand, six
22 thousand dollars, and the sales to the coconspirators reflect
23 139,839?

24 A. Actually, that's not quite accurate, if I understood your
25 question correctly.

GB7LGOH1

Quintero - direct

1 Q. If I misspoke, correct me, please.

2 A. The last bar 2015 shows total sales funded by Medicaid just
3 for that year for patients other than the alleged
4 coconspirators.

5 Q. My apologies. And that would reflect eight million, nine
6 hundred and eighty-five thousand, six thousand dollars for
7 patients other than the coconspirators?

8 A. Yes, sir, that is correct.

9 Q. While the coconspirators are only, excuse me, are
10 reflecting \$139,839, right?

11 A. Yes, sir.

12 Q. Let's turn to Defendant's Exhibit 85 in evidence. Now,
13 this notes at the top sales by Afam to the alleged
14 coconspirators billed to Medicaid in relation to total Afam
15 sales 2012-2015. Does this reflect the same time period of
16 January 1, 2012 to October 31, 2015?

17 A. This reflects all the way through December 31, 2015.

18 Q. Stand corrected. Can you explain this chart, this
19 demonstrative exhibit, please.

20 A. Yes, sir. The blue sliver represents the sales during that
21 four-year period to the alleged coconspirators that were funded
22 by Medicaid, so approximately \$384,000 over the four-year
23 period, as compared to roughly 28.8 million in sales to other
24 patients during that time period.

25 Q. So the 28.7 million reflects all of the sales to Medicaid

GB7LGOH1

Quintero - direct

1 and this 384 represents the Medicaid sales just to the
2 coconspirators?

3 A. No. The 28.8 million represents all sales funded by all
4 payer sources, including Medicaid, excluding the 384,000 of
5 sales funded by Medicaid on behalf of the alleged
6 coconspirators.

7 Q. So when comparing this \$28,783,757 in sales compared to
8 sales to alleged coconspirators, can you give us a percentage
9 ratio as to how many, how much sales were, based on this chart,
10 were not to the coconspirators and how many were, what the
11 percentage was?

12 A. Yes, sir. 98 percent, 98.7 percent of the sales were to
13 patients other than the alleged coconspirators, and only
14 1.3 percent pertained to sales to the alleged coconspirators
15 that were funded by Medicaid.

16 Q. Now let us turn our attention to Exhibit 86 if you can,
17 Defendant's Exhibit 86. Now, this is the document that we
18 reviewed just prior to the -- you mapping out the pie chart
19 that we just looked at, is it not?

20 A. Yes, sir, it is.

21 Q. Now let us look at Defendant's Exhibit 87. Now, what is
22 this, sir?

23 A. This exhibit shows the relationship between total sales
24 generated by Afam from 2012 to through 2015 that were funded by
25 sources other than Medicaid -- excuse me. More precisely it

GB7LGOH1

Quintero - direct

1 compares the total sales generated over that four-year period,
2 excluding the sales that were funded by all sources to on
3 behalf of the alleged coconspirators, as contrasted against the
4 sales that were funded by all sources, Medicaid and other
5 sources, on behalf of the alleged coconspirators.

6 Q. Let's just look. The chart at the top says total sales by
7 Afam to the alleged coconspirators funded by all payer sources
8 in relation to total Afam sales 2012-2015?

9 A. Yes, sir.

10 Q. Now, are we looking at all sales by Afam Pharmacy here?

11 A. Yes, during that four-year period.

12 Q. That comes out to what amount?

13 A. Sales other than to the alleged coconspirators amounted to
14 \$28,783,757, as compared to the alleged coconspirators from all
15 payer sources during that time period amounted to \$452,854.

16 Q. So if we look at the total sales to the alleged
17 coconspirators, it would amount to a percentage of 1.5 percent?

18 A. Yes, sir.

19 Q. Now let's turn your attention to Defendant's Exhibit 82 if
20 we may. Again, Defendant's Exhibit 82 was a document that we
21 reviewed previously I do believe. This is the document where
22 you were talking about the gross profit of 7.5 percent. Do you
23 see that?

24 A. Yes, sir.

25 Q. Now, sir, based on using this document and the tax returns,

GB7LGOH1

Quintero - direct

1 did you come up with or did you analyze exactly how much money
2 was earned as a result of this enterprise that is now before
3 the Court?

4 A. Yes, sir, I did, approximately.

5 (Continued on next page)

Gb7rgoh2

Quintero - direct

1 Q. Can you give us an idea of what that is.

2 A. Yes, sir. If we were to consider the entire roughly
3 \$450,000 in sales that were funded by all payer sources,
4 primarily Medicare but also through other payer sources or
5 personally by the alleged co-conspirators, that 450,000 is
6 about 1½ percent of the 29,168,000 over the 4-year period.
7 However, what is significant in terms of calculation is simply
8 the gross profit.

9 MR. RICHMAN: Objection, use of the word
10 "significant."

11 THE COURT: Sustained.

12 MR. RICHMAN: Thank you.

13 A. The alleged benefit --

14 THE COURT: The objection was sustained. Put another
15 question.

16 Q. Can you work us through these numbers, sir, and take us
17 into the tax consequences and financial remuneration earned as
18 a result of that.

19 A. Yes, sir. The sales that have been associated with the
20 alleged co-conspirators totaled \$450,000 over this time period.
21 Based on the gross margin of 7½ percent of sales that is
22 reflected in Exhibit 82, that would say that from 450,000 in
23 sales, the gross profit would be 7½ percent of that. If I were
24 to take \$450,000, multiply it by 7½ percent, the gross profit
25 on that on a pretax basis would be rounded, and I don't have a

Gb7rgoh2

Quintero - direct

1 calculator in front of me, rounded would be, say, \$40,000
2 pretax.

3 However, the other adjustments that need to be made
4 is, first of all, that's a pretax amount. The partners would
5 have to personally or the owners would have to pay taxes on
6 that. If the pretax profit is \$40,000, round numbers, if we
7 were to use a 35 percent tax bracket -- which is probably low
8 for these individuals if we consider that this would be taxed
9 both at the corporate level, the New York State level, the New
10 York City level -- 40,000 pretax becomes, we'll round it up,
11 \$30,000 after tax.

12 However, to further relate it to things that I
13 testified to before, Mr. Gohari is a 65 percent member or
14 owner. His share of \$30,000 after tax at 65 percent would be,
15 let's say, approximately \$18,000 over 4 years. So, if we were
16 to break that down on an annual basis, using those numbers,
17 16,000 over 4 years, it would be about \$4,000 a year.

18 In fact, I have done more precise numbers as opposed
19 to thinking this out off the top of my head. The more precise
20 numbers actually reduce it to just over a thousand dollars a
21 year.

22 Q. Let me show you what has been marked as Defense Exhibit
23 144, if we can put that on the screen, but not show it to the
24 jurors as it hasn't been admitted. If we can put it on the
25 screen. Mr. Quintero, I think you have that in your stack.

Gb7rgoh2

Quintero - direct

1 MR. KEHOE: May I approach, Judge?

2 THE COURT: Yes, I do.

3 Q. If you can, tell us about Defense Exhibit 144. What does
4 that say?

5 A. With what I understand to be Defense Exhibit 144, it
6 reveals, based on information that I directly got from a tax
7 return, the distributions that were specifically made to Mr.
8 Gohari. I estimate the taxes that he would have been liable
9 for as a 65 percent member, and recognize, as I previously
10 testified, that about 1½ percent of sales were associated with
11 sales to the alleged co-conspirators, 1½ percent of the after-
12 tax income would be the alleged benefit from the matter before
13 the court.

14 MR. RICHMAN: Objection, your Honor. I think the
15 witness is at this point reading from a document that is not in
16 evidence.

17 THE COURT: I don't know because defense counsel has
18 not favored the Court with a copy of this exhibit nor put it on
19 the screen for the Court.

20 MR. KEHOE: It was supposed to go on the screen,
21 Judge.

22 THE COURT: But it did not.

23 MR. KEHOE: I didn't know that. My apologies. I can
24 hand up a copy.

25 THE COURT: That would be very useful.

Gb7rgoh2

Quintero - direct

1 Sustained.

2 Q. Sir, did you actually put this document together?

3 A. Yes, sir, I did.

4 Q. You culled this information from the tax returns?

5 A. Yes, sir.

6 Q. Is this a summary chart from the tax returns and the other
7 information that you had?

8 A. With one exception, that being I used an assumed tax rate,
9 which is probably low, which means that the alleged benefit
10 would be even less than shown here. I used an assumed tax rate
11 of 35 percent.

12 MR. KEHOE: Your Honor, at this time we offer into
13 evidence Defense Exhibit 144.

14 MR. RICHMAN: Objection.

15 THE COURT: Ground?

16 MR. RICHMAN: The witness has just stated that there
17 is an assumption baked into Defense Exhibit 144 that is not
18 based on the tax returns: more pointedly, the taxes on net
19 income number that he used, the percentage.

20 THE COURT: You can cross-examine on that. Overruled.
21 Received.

22 (Defendant's Exhibit 144 received in evidence)

23 MR. KEHOE: Thank you, your Honor.

24 Can we put Defense Exhibit 144 on the screen. Can we
25 blow it up a little bit.

Gb7rgoh2

Quintero - direct

1 Q. You were talking about this document. Again let's go
2 through this line by line. This reflects monetary benefit to
3 Mr. Gohari of sales to alleged co-conspirators. Is that your
4 heading, sir?

5 A. Yes, sir.

6 Q. The distributions, what are those?

7 A. Those are the distributions that Mr. Gohari received over
8 the 4-year period from the company as reported on the company's
9 tax returns.

10 Q. You assumed a 35 percent income tax rate?

11 A. Yes, sir.

12 Q. Did you then deduct that from that number?

13 A. Yes, sir.

14 Q. The total after-tax cash flow, what is that?

15 A. This would say that net of taxes he would have benefited
16 over the 4-year period from the entire pharmacy, not just the
17 portion that may be attributed to sales to the alleged
18 co-conspirators but from running this entire operation, on an
19 after-tax basis his benefit would have been \$282,198 over 4
20 years.

21 Q. Taking these items, the 24,389 in 2012, the 23,379 in 2013,
22 50,110 in 2014, and 184,319, that's the after-tax money to Mr.
23 Gohari for everything that sold in the pharmacy, is that
24 correct?

25 A. That's right.

Gb7rgoh2

Quintero - direct

1 Q. The final number, the 282,000, from 2012 to 2015 is all of
2 the money coming to Mr. Gohari for those years?

3 A. Yes, sir.

4 Q. Take us down to the 1.5 percent. What is that?

5 A. Given that the sales associated with the alleged
6 co-conspirators were approximately 1½ percent of the sales of
7 the pharmacy over the 4-year period, the benefit that can be
8 related to these sales would be 1½ percent of \$282,198, over a
9 4-year period \$4,233.

10 Q. To assist the jury, before we go on, you have starred
11 Defense Exhibit 87. If we can put Defense Exhibit 87 back on
12 the screen. Is this the document or exhibit that you are
13 cross-referencing to come up with the 1.5 percent?

14 A. Yes, sir, it is.

15 Q. Let's look back to Defense Exhibit 144. We can blow up
16 that top part. Sir, going back to using that number percentage
17 of sales to the alleged co-conspirators, you took all the money
18 and multiplied it by 1.5 percent, and for this from 2012
19 through 2015 it amounts to cash of \$4,233 for Mr. Gohari?

20 A. Yes, sir, over the 4-year period.

21 Q. The next line says number of years annual monetary benefit.
22 Can you explain that.

23 A. Yes, sir. I divided the total over 4 years by the 4-year
24 period, and it amounts to \$1,058 per year.

25 Q. So profit to Mr. Gohari individually for all sales coming

Gb7rgoh2

Quintero - cross

1 to these co-conspirators over this 4-year period 2012-2015
2 amounts to \$1,058 per year?

3 A. Based on the best information available, that is correct.

4 MR. KEHOE: Thank you, Mr. Quintero. I have no
5 further questions. May I check with my co-counsel briefly?

6 THE COURT: Yes.

7 MR. KEHOE: Thank you, your Honor. Mr. Quintero,
8 thank you very much. I have nothing further.

9 THE COURT: Cross-examination.

10 CROSS-EXAMINATION

11 BY MR. RICHMAN:

12 Q. Good morning, Mr. Quintero.

13 A. Good morning.

14 Q. Mr. Quintero, most of your analysis is based on the
15 returns, the tax returns, provided by the partnership and the
16 defendant, correct?

17 A. Which analysis are you referring to?

18 Q. The analysis you just testified to.

19 A. That is one portion of the analysis.

20 Q. Your analysis is only as good as the underlying numbers you
21 are working with, correct? If you could answer yes or no, Mr.
22 Quintero. Mr. Quintero, the analysis --

23 MR. KEHOE: Excuse me, your Honor. There is a
24 question on the floor before another question is asked, with
25 all due respect. There are two questions.

Gb7rgoh2

Quintero - cross

1 THE COURT: I didn't hear the answer yet.

2 MR. RICHMAN: I'll rephrase the question.

3 Q. Mr. Quintero, your analysis is only as good as the
4 underlying numbers you work with, correct?

5 A. That's true with any analysis.

6 THE COURT: I think the answer is yes, is that
7 correct? Is that correct?

8 THE WITNESS: I'd not characterize it that way. But
9 it if it has to be yes or no, it would have to be yes on a
10 qualified basis.

11 THE COURT: Thank you.

12 Q. Your analysis relies on the validity of the numbers you
13 work with, correct?

14 A. On a qualified basis, yes.

15 THE COURT: What is your qualification?

16 THE WITNESS: That's the case with any analysis, but
17 there are many pieces of data that go into analysis.

18 THE COURT: What he is getting at is, for example,
19 some of your analysis is based on the income tax returns of the
20 company and the defendant, yes?

21 THE WITNESS: That is correct.

22 THE COURT: You don't know whether those tax returns
23 are accurate or inaccurate, you just take that as an assumption
24 to make your analysis, right?

25 THE WITNESS: Yes, sir.

Gb7rgoh2

Quintero - cross

1 THE COURT: I think that was the point that was being
2 suggested. Go on, counsel.

3 Q. In this case both the 2015 returns are actually in draft
4 form, correct?

5 A. Yes, sir.

6 Q. They haven't even been submitted to the IRS, correct?

7 A. I'm not aware of them having been submitted thus far.

8 MR. RICHMAN: Ms. Bostillo, if you could please pull
9 up Government Exhibit 1205.

10 Q. Mr. Quintero, these are the individual income tax returns
11 for the defendant from 2011?

12 MR. RICHMAN: If we could zoom in, please, on line 37.

13 Q. This shows that in 2011 the adjusted gross income for the
14 defendant was \$54,040, correct?

15 A. Yes, sir.

16 MR. RICHMAN: Ms. Bostillo, if we could move ahead to
17 Government Exhibit 1209.

18 Q. Mr. Quintero, these are the draft 2015 individual tax
19 returns for the defendant. If we could zoom in again. In this
20 case, in 2015, the defendant has reported an adjusted gross
21 income of \$486,584, correct?

22 A. Yes.

23 Q. Roughly from 2011 to the draft report for 2015, that's an
24 increase of about a little bit less than ninefold, correct?

25 A. I believe that's approximately correct.

Gb7rgoh2

Quintero - cross

1 Q. Approximately. Thank you. You testified earlier about
2 your experience with tax returns, correct?

3 A. I don't recall testifying specifically about my experience
4 with tax returns.

5 Q. Your experience as a CFA -- which involved working with tax
6 returns, correct?

7 A. As a CFA, CPA, and many --

8 Q. Right, all of your licenses. Have you ever done tax
9 returns for a criminal enterprise?

10 MR. KEHOE: Objection, Judge.

11 THE COURT: Sustained.

12 Q. Mr. Quintero, we'll move on. I want to ask you a few
13 questions about some of the numbers that you used during your
14 analysis.

15 MR. RICHMAN: If we could pull up Defense Exhibit 82,
16 please.

17 Q. Mr. Quintero, you used a gross profit when you talked about
18 the total numbers for the 2012 to 2015 period of 7½ percent,
19 correct?

20 A. Yes, sir.

21 Q. That you arrived at by averaging or totaling those years,
22 correct?

23 A. That is correct.

24 Q. But the margin was different year to year, wasn't it?

25 A. It was.

Gb7rgoh2

Quintero - cross

1 Q. For example, if we look at what is in front of you, in 2013
2 the margin was over 25 percent, was it not?

3 A. Yes, sir.

4 Q. Using your analysis here, if you had cabined your analysis
5 to 2013, the profit margin would have been 25 percent on all
6 drugs that came in, correct, or all drugs that were sold,
7 correct?

8 A. Looking just at that one year, that is correct.

9 Q. That was my question. Thank you. Your analysis also
10 doesn't take into account different margins across different
11 products, correct?

12 A. Correct. It is an average.

13 Q. If some of the medications that the defendant's pharmacy
14 dispensed had a much higher margin than others, that's not
15 accounted for in your analysis, correct?

16 A. I would have no basis for knowing that.

17 Q. That's not accounted for in your analysis, correct?

18 A. That is correct.

19 Q. If the defendant was charging for products and not actually
20 dispensing them, that's not accounted for here either, correct?

21 MR. KEHOE: Objection, your Honor.

22 THE COURT: Ground of the objection?

23 MR. KEHOE: He is asking for an answer that is purely
24 speculative, Judge. There is no basis, no foundation in these
25 questions prior to this for that.

Gb7rgoh2

Quintero - cross

1 THE COURT: There clearly is a basis for the previous
2 question. I'm not sure that there is a basis for this
3 question. Come to the side bar.

4 (At the side bar)

5 THE COURT: What is the evidence in evidence that he
6 charged for any given item without actually dispensing it?

7 MR. RICHMAN: Your Honor, Mr. Cabrera testified that
8 there would be times when prescriptions are billed but not
9 dispensed.

10 THE COURT: All right.

11 MR. KEHOE: It would still make it to the tax returns.
12 So what that has got to do with it?

13 THE COURT: That's the question. He is asking whether
14 it would make it to the tax return or not. The witness may
15 agree with you or disagree. I will permit the question.

16 (Continued on next page)

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Gb7rgoh2

Quintero - cross

1 (In open court)

2 (Question read)

3 A. That would be accounted for in the total numbers over the
4 5-year period.

5 Q. Mr. Quintero, if the defendant was charging for an item and
6 not dispensing it, it would impact the profit margin, would it
7 not?

8 A. It would not.

9 Q. It would not. If the defendant was charging a thousand
10 dollars for an item but had not actually paid for that item,
11 what would his profit margin be on that item if you can just
12 answer that question?

13 A. I want to make sure I understand the question. When you
14 say it would not be reflected in these numbers, you're
15 referring to the chart that is Defendant's Exhibit 282?

16 Q. We are taking a step back, Mr. Quintero. If the defendant
17 charged someone \$1,000 for a medication but he wasn't paying
18 anything for that medication, what would his profit margin be
19 on that medication?

20 A. On that individual sale --

21 Q. That's my question.

22 A. -- it would be 100 percent.

23 Q. Okay. If the defendant was doing that, Mr. Quintero, and
24 not reporting it in his tax returns, that would impact the
25 margins, correct?

Gb7rgoh2

Quintero - cross

1 MR. KEHOE: Judge, pure speculation. There is no
2 foundation for that at all.

3 THE COURT: Overruled.

4 A. It would have no impact on the tax return because the tax
5 return reflects sales that were reported and costs that were
6 reported. Those costs are reflected in cost of goods sold.

7 Q. If the defendant was selling an item for a thousand dollars
8 but not buying it and not reporting that transaction, that
9 would impact the margin, correct?

10 A. No, sir, because the cost of goods sold reflects everything
11 that was purchased.

12 Q. It reflects everything that was purchased if the defendant
13 chooses to report it, correct?

14 A. No, sir. That's not the way cost of goods sold is
15 calculated.

16 Q. The cost of the items, Mr. Quintero, if the defendant
17 chose --

18 THE COURT: I think the problem is the two of you
19 don't seem to be on the same wavelength.

20 The cost of goods sold are the reported cost of goods
21 sold, yes, correct?

22 THE WITNESS: They are the reported cost of goods
23 sold, but it's based on all purchases.

24 THE COURT: Excuse me. Could you answer my question.
25 The cost of goods sold that you are relying on are the reported

Gb7rgoh2

Quintero - cross

1 cost of goods sold. Isn't that a yes-or-no question?

2 THE WITNESS: Yes, sir.

3 THE COURT: What is the answer?

4 THE WITNESS: That is correct.

5 THE COURT: Thank you. Go ahead.

6 BY MR. RICHMAN:

7 Q. Mr. Quintero, you are familiar with a guarantee in
8 partnership tax, correct?

9 A. A guarantee in partnership tax?

10 Q. Something called a guarantee for a partnership, correct?

11 A. There are many types of guarantees for partnerships.

12 Q. One type of guarantee for a partnership is a payment that's
13 made to the partners in addition to the split of partnership
14 income, correct?

15 A. That could be. It depends upon the agreement.

16 Q. It depends on the agreement. Have you seen the partnership
17 agreement in this case?

18 A. I don't believe I have.

19 Q. It's usually paid on top of the split of partnership
20 profits, correct?

21 MR. KEHOE: I would object, Judge. There is no
22 foundation for this.

23 THE COURT: Sustained.

24 Q. Mr. Quintero, in this case, when you discussed the profit
25 the defendant supposedly made, you didn't include anything

Gb7rgoh2

Quintero - cross

1 about a guarantee in your analysis, did you?

2 A. Yes, sir, because the profit was net of guarantee payments
3 to partners.

4 Q. Specific to what the defendant made, there was nothing in
5 that testimony about the guarantee, the money that the
6 defendant himself received, was there?

7 MR. KEHOE: Asked and answered.

8 THE COURT: I'll allow it.

9 A. I didn't precisely reflect on this analysis, that is
10 correct.

11 Q. We will take a look at some of that together.

12 MR. RICHMAN: Your Honor, permission to publish
13 Government Exhibit 1200.

14 THE COURT: Go ahead.

15 MR. RICHMAN: Ms. Bostillo, if we could highlight line
16 10, please.

17 Q. Mr. Quintero, if you can read that, it says that there is a
18 guarantee payment reported in 2011 of \$82,873 to the partners,
19 correct?

20 A. Yes, sir.

21 Q. The defendant's portion of this didn't factor into any of
22 the testimony you gave on direct examination, correct?

23 A. That is correct.

24 MR. RICHMAN: Your Honor, permission to publish
25 Government Exhibit 1201, please.

Gb7rgoh2

Quintero - cross

1 THE COURT: Okay.

2 MR. RICHMAN: Ms. Bostillo, if you could please
3 highlight line 10 again.

4 Q. Mr. Quintero, this shows a reported guarantee payment of
5 \$104,761, correct?

6 A. Yes, sir.

7 MR. RICHMAN: Ms. Bostillo, if we could please turn to
8 page 11 of this document.

9 Q. Mr. Quintero, this is the schedule K-1 for the defendant
10 from tax year 2012.

11 MR. RICHMAN: Ms. Bostillo, if you could highlight box
12 4, please, up at the top right.

13 Q. Mr. Quintero, if you look at box 4, that shows a guaranteed
14 payment to the defendant of \$94,380, correct?

15 A. Yes, sir.

16 Q. Once again, Mr. Quintero, on direct examination you didn't
17 testify to that number, correct?

18 A. That is correct.

19 MR. RICHMAN: Your Honor, permission to publish
20 Government Exhibit 1202, please.

21 THE COURT: Yes.

22 MR. RICHMAN: Ms. Bostillo, if you could please again
23 highlight line 10.

24 Q. Mr. Quintero, line 10 says that the guaranteed payments to
25 partners reported for tax year 2013 is \$118,600, correct?

Gb7rgoh2

Quintero - cross

1 A. Yes, sir.

2 MR. RICHMAN: Ms. Bostillo, if we could please turn to
3 page 14 of this document.

4 Q. Mr. Quintero, this is the K-1 for the defendant from tax
5 year 2013, and it lists his share of the guarantee of \$104,600,
6 does it not?

7 A. Yes, sir.

8 Q. Once again, Mr. Quintero, your testimony on direct
9 examination didn't include this number, correct?

10 A. It did not.

11 MR. RICHMAN: Your Honor, permission to publish
12 Government Exhibit 1203, please.

13 THE COURT: Yes.

14 MR. RICHMAN: Ms. Bostillo, if you could please again
15 highlight line 10.

16 Q. Mr. Quintero, this shows a guarantee payment to partners
17 for tax year 2014 of \$51,765, correct?

18 A. Yes, sir.

19 MR. RICHMAN: Ms. Bostillo, if you could please turn
20 to page 8. And if you could highlight box 4, please.

21 Q. Mr. Quintero, again, this is the K-1 for the tax year 2014,
22 correct?

23 A. Yes, sir.

24 Q. It lists the guarantee for the defendant as \$51,765,
25 correct?

Gb7rgoh2

Quintero - cross

1 A. Yes, sir.

2 Q. That's the same amount as the full guarantee that we just
3 reviewed for the partnership, correct?

4 A. That is correct.

5 MR. RICHMAN: Your Honor, permission to publish
6 Government Exhibit 1204, please.

7 THE COURT: Yes.

8 Q. Mr. Quintero, this is the draft tax return for tax year
9 2015, correct?

10 A. Yes, sir.

11 Q. Again we'll look at line 10, which shows a guaranteed
12 payment to partners of \$175,000, correct?

13 A. Yes, sir.

14 MR. RICHMAN: Ms. Bostillo, if we could please turn to
15 page 8.

16 Q. Mr. Quintero, this is the K-1 for the defendant from last
17 tax year, the draft K-1. This lists his share of the guarantee
18 as \$175,000, correct?

19 A. Yes, sir.

20 Q. That's the full guarantee for tax year 2015, correct?

21 A. That is correct.

22 Q. Once again, Mr. Quintero, this number was not relied upon
23 during your direct examination, correct?

24 A. Well, it was relied upon in my income summary, not with
25 respect to the personal benefit realized by Mr. Gohari.

Gb7rgoh2

Quintero - redirect

1 Q. Exactly. Thank you, sir.

2 MR. RICHMAN: May I have one moment, your Honor?

3 THE COURT: Yes.

4 MR. RICHMAN: Your Honor, no further questions at this
5 time.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. KEHOE:

9 Q. Let's go through some of the questions raised by my learned
10 friend, Mr. Quintero. Let's turn our attention first to I
11 think it was 1209, Government Exhibit 1209. If we can go down
12 to the bottom of that page, this is the draft tax return for
13 2015, is that right, sir?

14 A. Yes, sir.

15 Q. This is the document that counsel just talked to you about,
16 right?

17 A. That is correct.

18 Q. If you go down to the bottom of the page, if we could blow
19 that up, the bottom, I think he raised the fact that there was
20 an adjusted gross income of \$486,584, is that right?

21 A. Yes, sir.

22 Q. What does adjusted gross income reflect?

23 A. This is Mr. Gohari's income tax return. That would be the
24 adjusted gross income prior to deductions that would be a basis
25 for his federal income taxes.

Gb7rgoh2

Quintero - redirect

1 Q. Let us turn our attention with this number back to Defense
2 Exhibit 84. This is again a document that we looked at on
3 direct examination. I don't believe my learned friend showed
4 you this document on cross, did he?

5 A. He didn't.

6 MR. RICHMAN: Objection, your Honor. This is beyond
7 the scope.

8 THE COURT: Sustained.

9 MR. KEHOE: If I may, Judge --

10 THE COURT: No, no. I'm sustaining the objection to
11 the form of the question.

12 MR. KEHOE: Yes, your Honor.

13 Q. If we could look at this document and compare 2014 to 2015,
14 and it reflects sales to individuals other than
15 co-conspirators, was there a growth in sales to individuals
16 other than the co-conspirators or a decline?

17 A. A significant growth, increase.

18 Q. Take us to the numbers between 2014 and 2015. What are the
19 numbers for 2014 and 2015?

20 A. 2014, the sales to parties other than the alleged
21 co-conspirators amounted to \$1,589,019. In 2015 they increased
22 to \$8,985,006.

23 Q. So it would be fair to say that somewhere in the area of,
24 what, six times the amount of sales to other customers took
25 place in 2015 that didn't transpire in 2014?

Gb7rgoh2

Quintero - redirect

1 A. Yes, sir, that is correct.

2 Q. When you make that additional money, here the \$8,985,000,
3 that is then reflected in the tax return that my learned friend
4 talked about, 1209, any additional moneys, of course, have to
5 be reported and paid taxes on, right?

6 A. That is correct.

7 Q. Is there any indication from other than the draft or terms
8 that these other tax returns, both at a partnership level and
9 at an individual level have not been properly submitted to the
10 IRS?

11 MR. RICHMAN: Objection, your Honor.

12 MR. KEHOE: It was asked on cross-examination.

13 THE COURT: No, no, that isn't quite what was asked.
14 Come to the side bar.

15 (Continued on next page)

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Quintero - redirect

1 (At the side bar)

2 THE COURT: The question that the Court has is does
3 either counsel have any information on whether these returns
4 were in fact submitted to the IRS?

5 MR. KEHOE: I do, Judge.

6 THE COURT: Yes?

7 MR. KEHOE: They have been submitted.

8 THE COURT: How do you know that?

9 MR. KEHOE: Talking to the accountant, the Afam
10 accountant, Gohari's accountant.

11 MR. RICHMAN: That's news to the government, your
12 Honor. We don't have evidence to the contrary, but we didn't
13 know that.

14 THE COURT: On that representation, I will allow the
15 question.

16 MR. RICHMAN: Your Honor, the issue of the objection
17 was foundational.

18 THE COURT: You basically raised the question, because
19 they are labeled "draft," did he know whether or not they had
20 been submitted, and he said no, he didn't know. That was fair
21 game. But since counsel has independent knowledge that they
22 were submitted, he's just trying to ask whether the witness has
23 any reason to believe that these were not submitted or words to
24 that effect. I think that is fair game too.

25 (Continued on next page)

Gb7rgoh2

Quintero - redirect

1 MR. KEHOE: If I may, Judge. I was talking about
2 2012, 2013, 2014. 2015, to my understanding, is still in draft
3 form, has not been filed.

4 THE COURT: Then you need to confine that.

5 MR. KEHOE: I did.

6 (Continued on next page)

Gb7rgoh2

Quintero - redirect

1 (In open court)

2 BY MR. KEHOE:

3 Q. Mr. Quintero, with regard to the tax returns, not the draft
4 tax return for 2015, do you have any indication that the tax
5 returns for the years 2012, 2013, and 2014 were not submitted
6 to the IRS?

7 A. No, sir. I believe they were.

8 THE COURT: Just so I'm clear and the jury is clear,
9 you don't know whether or not 2015 was submitted, do I
10 understand that correctly?

11 THE WITNESS: That is correct.

12 THE COURT: Looking at Defense Exhibit 84, the figures
13 there that are significantly different for 2015 are drawn from
14 the income tax return, do I have that right?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Very good.

17 BY MR. KEHOE:

18 Q. Let's go to Government Exhibit 1200. We talked about the
19 lines. Could we put the first line up on the screen. I
20 believe it was a guarantee payment. Is that line 10? Counsel
21 asked you about guarantee payments to partners. Do you recall
22 those questions?

23 A. Yes, sir.

24 Q. What is a guarantee payment of a partner?

25 A. My only knowledge is from what appears in the tax return.

Gb7rgoh2

Quintero - redirect

1 Q. Just what you know from the tax return, not outside. What
2 does that mean?

3 A. That means that the amount indicated on line 10 of the 2011
4 tax return is the amount that would have been made to the
5 partners of Afam.

6 Q. Is that one partner, two partners, three partners? How
7 many is that?

8 A. Three partners.

9 Q. So you have a guarantee payment of partners that is then
10 split up between the 65 and the other percentage, what is it,
11 35, right?

12 A. Yes, sir.

13 Q. Now I think we can go through this. I think counsel asked
14 you questions that you didn't talk about during your direct
15 examination. Do you remember those questions?

16 A. Yes, sir.

17 Q. There are guarantee payments to partners in all of these
18 years, aren't there?

19 A. There are.

20 Q. When you get your percentage guarantee, what happens with
21 that money from there?

22 A. It reduces the taxable income of the company.

23 Q. When that money flows down to the individual partners, be
24 it Mr. Gohari or the others, what happens then?

25 A. They get taxed personally on that amount.

Gb7rgoh2

Quintero - redirect

1 Q. And pay taxes personally on that amount?

2 A. That is correct.

3 Q. Going back to the guarantee payment to partners, what
4 impact does that have on the percentage of profit generated by
5 sales to the co-conspirators?

6 A. It has no direct relationship.

7 Q. Let's use one document as an example. Let's put Defense
8 Exhibit 85 on the screen. This is sales by Afam to
9 co-conspirators, billed to Medicaid. You said that there are
10 28 million-plus to Medicaid from the entire business and 1.3 to
11 co-conspirators, right?

12 A. 1.3 percent, that is correct.

13 Q. What does the guarantee payment to the partners have
14 anything to do about the \$28,783,757 figure on this chart?

15 MR. RICHMAN: Objection to form, your Honor.

16 THE COURT: I'll allow it.

17 A. It would have no impact on any number on this chart.

18 Q. Let me turn our attention to Defense Exhibit 87. This is
19 the total sales to alleged co-conspirators funded by all
20 payers?

21 A. Yes, sir.

22 Q. This is 87: 28,783,757, and it says 98 percent. This is
23 sales from all pay sources, correct?

24 A. That is correct.

25 Q. With sales to the co-conspirators of 1.5 percent?

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1 A. Yes, sir.

2 Q. What do the guarantee payments to partners on the tax
3 returns have to do with this \$28.7 million figure of all sales
4 to conspirators from all payer sources? What does that have to
5 do with it?

6 A. Nothing at all.

7 MR. KEHOE: Thank you, your Honor. No further
8 questions.

9 THE COURT: Any recross?

10 MR. RICHMAN: One moment, please, your Honor.

11 No questions, your Honor. Thank you.

12 THE COURT: Thank you very much. You may step down.

13 (Witness excused)

14 THE COURT: Ladies and gentlemen, we will give you
15 your mid-morning break at this point. There are a couple of
16 legal matters I have to take up with counsel, so it will
17 probably about a 20-minute break. I'll see you in 20 minutes.

18 (Continued on next page)

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1 (Jury not present)

2 THE COURT: I was just furnished by my law clerk with
3 a two-page single-spaced letter sent by email yesterday by the
4 government. The Court's individual rules, in their very first
5 sentence, prohibit counsel from submitting any letter or other
6 correspondence without prior permission of the Court. I of
7 course, as you would expect, was here yesterday in chambers
8 through most of the day, specifically, from at least 10:00 to
9 5:00, and no call was received. What accounts for the
10 government having sent this in violation of my rules?

11 MS. ESTES: Your Honor, our apologies. We thought
12 since it was the weekend, that that was the appropriate course.
13 I misunderstood --

14 THE COURT: There is no exception in my rules. The
15 reason for the rules, and this is a good example, is had you
16 called and asked permission to send this, then I would have
17 ordered the defense to put in their response yesterday, and I
18 could have, instead of taking the jury's time now, dealt with
19 it. But let's deal with it now.

20 Has defense counsel seen this?

21 MR. KEHOE: Yes, your Honor. I saw it last night.

22 THE COURT: Tell me what these witnesses are going to
23 testify to.

24 MR. KEHOE: We have several different witnesses,
25 Judge. I will take them in order. I have several witnesses

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1 and Mr. Bachner has a witness. These witnesses are going to
2 address specific issues raised by the prosecution.

3 Ms. Michelle Harewood was a long-term patient from Mr.
4 Gohari. She had been going there initially because her doctor
5 was next door. Her doctor moved, and then she continued to go
6 very large distances to Mr. Gohari's pharmacy because she was
7 more comfortable there and that's where she wanted to do her
8 business and consistently dealt with that pharmacy.

9 THE COURT: Is that all for her?

10 MR. KEHOE: No, your Honor.

11 THE COURT: Keep going.

12 MR. KEHOE: One of the other issues brought up by the
13 defense was the fact that Mr. Cabrera had Mr. Gohari's cell
14 phone. Ms. Harewood had Mr. Gohari's cell phone number as a
15 long-term patient.

16 There has been an issue raised by the government about
17 third parties picking up prescriptions. Ms. Harewood picked up
18 prescriptions for not only herself, her father, and her
19 children, but also from her landlord. Mr. Gohari never asked
20 for any idea, etc.

21 The last issue concerning Ms. Harewood is the
22 suggestion by Mr. Gohari that she should get other
23 prescriptions, how is that relevant. It's relevant to rebut
24 the suggestion advanced by the United States that when Gohari
25 was telling Cabrera that these people should get other

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1 prescriptions, this was an issue focused simply on Cabrera so
2 they would go out and generate some high-amount, high-priced
3 prescriptions, when in truth and in fact as a pharmacist, here
4 is a woman to whom he said go get a different medication and
5 suggested a medication to her.

6 Lastly --

7 THE COURT: Whoa. Just so I'm clear on this point you
8 were just discussing, a prescription for a cheaper medication?

9 MR. KEHOE: Yes. Generally speaking, it was for a
10 lower copay.

11 THE COURT: How does that respond to the point? I see
12 how the other parts respond, but how does that respond to the
13 situation from what Mr. Cabrera was supposedly doing?

14 MR. KEHOE: It responds to it because Mr. Gohari as a
15 pharmacist was talking to a patient to suggest to that
16 patient -- whether or not the patient did it is another
17 issue -- that that patient should go get a different medication
18 from his or her doctor. The suggestion coming from Mr. Cabrera
19 was that every time Mr. Gohari did that or made that
20 suggestion, it was for some alternative purpose, i.e., to
21 generate more income for the pharmacy.

22 THE COURT: I see. I'm not sure that is what the
23 testimony was, but if that were the testimony, I could see your
24 argument. Go ahead. What is the last one?

25 MR. KEHOE: The last point with Ms. Harewood was that

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1 she had been a patient there, waived the copay. The suggestion
2 coming from waiving the copay from Mr. Cabrera was they waived
3 the copay because this was all part of the deal, when in truth
4 and in fact Mr. Gohari on occasion had a customer, a patient,
5 that was there for a significant period of time and waived the
6 copay. I know your Honor has gathered that this is a
7 neighborhood that, frankly, is of a low socioeconomic level.

8 THE COURT: Let's stop with Ms. Harewood. I guess
9 it's "hare-wood,", H-A-R-E-W-O-O-D?

10 MR. KEHOE: Yes.

11 THE COURT: Let me ask the government why isn't at
12 least some and maybe all of what counsel just said relevant?

13 MS. ESTES: Your Honor, we submit that some of those
14 things are relevant. Our concern that much of the 3500 talk
15 about how the defendant was such a pharmacist, helpful things
16 he would do with filling the prescriptions. We think evidence
17 in that regard is entirely irrelevant.

18 THE COURT: I agree with that, but that's not what
19 counsel says he is offering it for. He says basically it's
20 being offered to rebut various specific arguments made by the
21 government as to ways in which the defendant was acting in
22 either a suspicious manner or failing to act under allegedly
23 specific circumstances.

24 What this shows, defense counsel would argue, is that
25 the kinds of the circumstances that the government referred to

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1 can come up in perfectly innocent situations and therefore the
2 argument would be that Mr. Gohari had no reason to be
3 suspicious when it came up in the Cabrera type of situations
4 because it was something that came up in perfectly innocent
5 situations. I take it that is the gist of the argument.

6 MR. KEHOE: That is the gist of the argument, yes,
7 sir.

8 THE COURT: That seems perfectly relevant to me. But
9 I agree, I'm sure counsel knows that any testimony from these
10 witnesses about what a wonderful guy Mr. Gohari was or we just
11 had total satisfaction with his pharmacy and his personal
12 practices, that would be of course irrelevant and forbidden.
13 You understand that, of course?

14 MR. KEHOE: Yes, your Honor.

15 THE COURT: Anything else?

16 MS. ESTES: That's fine. Thank you, your Honor.

17 MR. BACHNER: Thank you, your Honor. I have two
18 witnesses. One witness is a Ms. Eunice Cozens, your Honor.
19 Ms. Cozens will testify that she is suffering from COPD, that
20 she had been frequenting the defendant's pharmacy actually when
21 he worked at a different location, then continued to frequent
22 his location when he moved further.

23 The reason for that, even though she had a pharmacy
24 right across the street from her, was because Mr. Gohari ran an
25 efficient pharmacy where he saw her when she needed, he cared

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1 for her when she walked through the door, and he understood the
2 significance --

3 THE COURT: I think the first part is relevant, the
4 second is not. She can certainly say that I continued with Mr.
5 Gohari when he moved further away. She can describe the
6 distance and that it was not in the same neighborhood. But
7 that's it.

8 MR. BACHNER: Judge, if I might just complete? I
9 understand your Honor's ruling.

10 THE COURT: Yes.

11 MR. BACHNER: It would seem to us, your Honor, that
12 that rebuts the government's portion that the reason people go
13 farther away would have to be for nefarious reasons when there
14 actually are completely legitimate reasons that I think the
15 jury should be entitled to know.

16 THE COURT: The trouble is it's a 403 problem. When
17 you start getting into stuff like, well, I regarded Mr. Gohari
18 as Mr. Wonderful, then the probative value is substantially
19 outweighed by the prejudice. If the government is stupid
20 enough to on cross-examination say wasn't it for some bad
21 reason that you did this, then of course the door will be open
22 to what you have just said, but not on direct.

23 MR. BACHNER: There are two other things she will say,
24 your Honor. One is that there was a point in time she needed a
25 prednisone prescription filled because she had gotten so sick

Gb7rgoh2

1 that she had used it up too quickly. She understood that Mr.
2 Gohari was not permitted to give her another prescription
3 because the time had run out. She went to see him, and she had
4 a conversation with him, which she understands she cannot
5 reiterate to the Court.

6 But I would say, did you ask Mr. Gohari to fill that
7 prescription? Yes. Did you have an understanding as to
8 whether he could? She knew from her own personal experience
9 that a pharmacist couldn't do that, and she said yes. And did
10 Mr. Gohari do that? He refused. Did there come a point in
11 time when you had another conversation and he did? Yes, he
12 gave me two sample pills to hold me over, and I went to the
13 hospital.

14 THE COURT: These are in fact prior good acts, so
15 those are not admissible.

16 MR. BACHNER: I would think it just rebutted the
17 government's case that he was just giving out scripts before
18 they ran out in time willy-nilly when in fact just with
19 prednisone pills --

20 THE COURT: Again, it is much too colored. In effect
21 what you are saying is suggesting to the jury from the facts of
22 the case that there she was -- I'm going to exaggerate -- on
23 death's door begging him to fill a prescription that he knew
24 the law prevented him from doing. I'm not going to allow that.

25 MR. BACHNER: Actually, not exaggerating. She would

Gb7rgoh2

1 say --

2 THE COURT: Then you make my case.

3 MR. BACHNER: Finally, your Honor, regarding the issue
4 about the pharmacist being compassionate and caring, I
5 understand your Honor's ruling. I just want to fill the
6 record. Underlying the government's case is the fact that a
7 pharmacist would be doing what Mr. Gohari did lacks total
8 compassion, lacks total caring for his patients.

9 THE COURT: I have not heard one word from the
10 government on that.

11 MR. BACHNER: Isn't it implicit, your Honor?

12 THE COURT: No, it is not implicit. I don't assume it
13 and I have no reason to believe the jury assumes it. I was
14 under the naive impression that pharmacists, like lawyers, are
15 professionals and they act out of professional motives. No one
16 has ever accused lawyers as being the soul of compassion, but
17 their glory is when they act as professionals.

18 MR. BACHNER: Your Honor, finally there is one other
19 witness that we are going to be calling subject to your Honor's
20 ruling on this. The defendant's uncle, Mr. Said, the last name
21 is hard to say, A-S-K-A-R-I-N-A-M, he, your Honor, would
22 testify that he's been to the defendant's pharmacy many times,
23 it's a very busy location, he's been there, he is one of his
24 clients, etc.

25 However, also, your Honor, as background we would seek

Gb7rgoh2

1 to elicit that he was affirmatively instrumental in negotiating
2 and bringing Mr. Gohari and family members from Iran to the
3 United States, that he actually got the lawyers involved, was
4 involved in the various agencies.

5 THE COURT: What is the relevance of that?

6 MR. BACHNER: The reference, your Honor, is to give
7 the jury a fuller picture of the situation and also to deal
8 with one of the issues your Honor had raised at side bar at an
9 earlier time. We are trying to complete that picture for the
10 jury as far as the background of how he came to the country. I
11 think it shows an understanding of who the defendant is and his
12 coming into the country.

13 (Continued on next page)

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1 THE COURT: In fact it seems to be totally
2 objectionable. It seems first to be an attempt to get into
3 evidence something that the Court already indicated was
4 inadmissible hearsay. And, second of all, it's irrelevant to
5 the issues in this case and clearly prejudicial.

6 MR. BACHNER: Your Honor, I understand your Honor's
7 ruling. We wouldn't do it through hearsay, but I understand
8 your Honor's ruling otherwise on that issue.

9 Your Honor, I did speak with the government about this
10 before I brought it to your Honor's attention. I felt I had to
11 make a record for the Court. The government has agreed that
12 they're not going to address the remarks on opening about the
13 Iranian situation for lack of proving it, and we're not going
14 to raise it again as well. So I wanted to bring that to your
15 Honor's attention.

16 THE COURT: Okay. Very good.

17 All right. Anything else? Yes.

18 MR. KEHOE: Yes, your Honor. We had other witnesses
19 other than these.

20 THE COURT: I think the ground rules are hopefully
21 pretty clear now. So if there's any specific witness who
22 raises a specific issue that you have a question about, just
23 approach the side bar.

24 MR. KEHOE: Yes, your Honor.

25 THE COURT: All right. We'll take a five-minute break

GB7LGOH3

1 and then we'll resume.

2 MR. BACHNER: Thank you your Honor.

3 (Recess)

4 THE DEPUTY CLERK: Shall I bring in the jury?

5 THE COURT: Yes. Let's get the next witness on the
6 stand.

7 (Continued on next page)

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GB7LGOH3

Askarinam - direct

1 (Jury present)

2 THE COURT: Please be seated. Go ahead.

3 SAEED ASKARINAM,

4 called as a witness by the Defendant,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BACHNER:

8 Q. Good morning, Mr. Askarinam.

9 A. Good morning.

10 Q. Sir, do you know someone named Danny Gohari?

11 A. Yes, I do.

12 Q. How do you know him?

13 A. I'm Danny's uncle.

14 Q. And do you see Danny seated in the courtroom today?

15 A. Yes, I do.

16 MR. BACHNER: Stipulate into the record?

17 MS. ESTES: Yes.

18 Q. Mr. Askarinam, just tell us a little bit about yourself.

19 Were you born here in the United States?

20 A. No. I was born in Shiraz, Iran.

21 THE COURT: I will allow a limited amount, very
22 limited. So go ahead.

23 MR. BACHNER: Limited background.

24 Q. When did you come to the U.S.?

25 A. I came to United States in December of 1971.

GB7LGOH3

Askarinam - direct

1 Q. Sir, could you tell the jury just what you do for a living?

2 A. I'm in the real estate business.

3 Q. And, sir, do you have hold any degrees?

4 A. Yes. I have my undergraduate degree, electrical engineer,
5 and my graduate degree in business administration, master of
6 business administration.

7 Q. And, sir, just generally where do you work presently?

8 A. I have my own company. I have an office in Brooklyn, New
9 York.

10 Q. Sir, do you know a pharmacy called Afam Pharmacy?

11 A. Yes, I do.

12 Q. How do you know that pharmacy?

13 A. I went there to fill out my prescription. Also, Danny
14 being my nephew, I frequently visit him.

15 Q. And you understand that Danny works at Afam?

16 A. He did work there, yes.

17 Q. And, sir, how often would you go to that pharmacy?

18 A. At least two, three times a month.

19 Q. And at the time you went to the pharmacy was it always to
20 fill prescriptions?

21 A. Not always. I would go, being my nephew, sometimes I will
22 go there to see how he's doing. So I was always in the
23 neighborhood.

24 Q. And did you have an occasion, sir, to see how large --
25 could you describe for the jury how large the pharmacy it was?

GB7LGOH3

Cousins - direct

1 A. It's a very small pharmacy. I would say about two, 300
2 square foot, small waiting area at the beginning, and Danny was
3 in the back of the store filling out prescription.

4 Q. Would you describe the store as -- how would you describe
5 the store as far as the level of how busy it was?

6 A. It's very active. Quite often people will come and fill
7 out prescription and Danny was constantly on the phone filling
8 out prescription and, you know, counting pills.

9 Q. And were there other pharmacists working in that pharmacy?

10 A. On occasion I would see one other pharmacist there.

11 Q. And do you know that person by name?

12 A. Something Bobby.

13 MR. BACHNER: One second.

14 Thank you, sir. No other questions, sir. Pass the
15 witness.

16 THE COURT: Cross-examination.

17 MS. ESTES: We don't have any cross-examination, your
18 Honor.

19 THE COURT: Thank you very much. You may step down.

20 (Witness excused)

21 THE COURT: Please call your next witness.

22 MR. KEHOE: The defense calls Michelle Harewood.

23 Your Honor, there's one patient that I think needs to
24 go.

25 THE COURT: Go ahead.

GB7LGOH3

Cousins - direct

1 MR. KEHOE: Mr. Bachner told me about that.

2 THE DEPUTY CLERK: Please take the witness stand.

3 ENIS COUSINS,

4 called as a witness by the Defendant,

5 having been duly sworn, testified as follows:

6 MR. BACHNER: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MR. BACHNER:

9 Q. Good morning, Ms. Cousins. Ms. Cousins, what borough to
10 you live in?

11 A. Kings County, Brooklyn.

12 Q. Are you presently working?

13 A. No.

14 Q. Are you disabled?

15 A. Yes.

16 Q. What conditions do you suffer from?

17 A. Severe COPD.

18 Q. Ma'am, do you have children?

19 A. Yes, I do.

20 Q. Just in a line or two, what do your children do?

21 A. My first one is a minister. The second one is a Harvard
22 law school graduate. He works in Chicago with HP. And my last
23 one, 17-year-old, just got a full scholarship to Princeton.

24 Q. Congratulations.

25 A. Thanks.

GB7LGOH3

Cousins - direct

1 THE COURT: Wait a minute. The first one is a
2 minister; that's good. The last one. Did I hear that the
3 middle one is a lawyer?

4 THE WITNESS: Yes, corporate lawyer.

5 THE COURT: My condolences.

6 THE WITNESS: Your condolences.

7 THE COURT: Okay, counsel.

8 MR. BACHNER: Thank you, Judge.

9 Q. Ms. Cousins, do you know Danny Gohari?

10 A. Oh, yes, I do.

11 Q. Do you see Danny here in the courtroom today?

12 A. Yes, I saw him.

13 Q. Could you point him out?

14 A. He's right there.

15 THE COURT: All right.

16 Q. Thank you. Ms. Cousins, when did you first meet Danny
17 Gohari, if you can recall?

18 A. Well, it was maybe about 12 years ago because my primary
19 care doctors and my pulmonologist, cardiologist were right at
20 the facility where his pharmacy was right there next-door,
21 attached to building.

22 Q. And what location was that pharmacy?

23 A. That's Utica Avenue, 5025 Church Avenue.

24 Q. Did there come a time, Ms. Cousins, when that pharmacy
25 changed locations?

GB7LGOH3

Cousins - direct

1 A. Not too long ago, yes.

2 Q. And after the pharmacy changed locations, did you continue
3 to frequent the pharmacy where Danny was working at?

4 A. I sure do.

5 Q. And approximately how far is that pharmacy from where you
6 presently reside or where you resided at that time? I
7 apologize.

8 A. My residency has been there for 19 years. And on a good
9 day I would say it's walking distance, but it's approximately
10 like a five-minute drive.

11 Q. And is there a pharmacy closer than Afam Pharmacy to your
12 present home?

13 A. Oh, sure, there's half a block from me, but I don't go
14 there.

15 Q. And at the time that you went to Afam Pharmacy, you filled
16 a -- did you fill a variety of prescriptions there?

17 A. Oh, yes, I do.

18 Q. And as far as the pharmacy is concerned, when you came into
19 the pharmacy, who did you deal with?

20 A. I dealt with Danny on much of the occasions and sometimes
21 other workers.

22 Q. And when you went into the pharmacy, did you have to wait
23 to have your prescriptions filled?

24 A. I do have to wait, but not very long in comparison to the
25 other pharmacies I've been to.

GB7LGOH3

Harewood - direct

1 Q. Now, ma'am, can you describe for the jury how busy the
2 pharmacy was?

3 A. It's very busy.

4 Q. And can you describe what you would see Danny doing on an
5 average day when you were there?

6 A. Well, he's in between phone calls, filling prescriptions,
7 you know, telling other workers what to do, what not to do and
8 stuff like that. He's always busy.

9 Q. And are you -- without getting -- withdrawn.

10 MR. BACHNER: Thank you very much, Ms. Cousins.

11 Pass the witness, your Honor.

12 THE COURT: Any cross-examination?

13 MS. ESTES: No, your Honor.

14 THE COURT: Thank you very much. You may step down.

15 (Witness excused)

16 MR. KEHOE: The defense calls Michelle Harewood.

17 THE DEPUTY CLERK: Please take the witness stand.

18 MICHELLE HAREWOOD,

19 called as a witness by the Defendant,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. KEHOE:

23 Q. Good morning, Ms. Harewood.

24 A. Good morning.

25 Q. Ms. Harewood, where do you live?

GB7LGOH3

Harewood - direct

1 A. 937 Saratoga Avenue, Brooklyn, New York.

2 Q. What neighborhood is that generally in Brooklyn?

3 A. Brownsville.

4 Q. How long have you resided there?

5 A. About six years.

6 Q. Ms. Harewood, are you currently suffering from some
7 physical ailments?

8 A. Yes. I have sinus and back injuries.

9 Q. And you're not currently employed?

10 A. No, I'm not.

11 Q. Now, do you know -- for some of your issues have you gone
12 to a doctor, a Dr. Tipu?

13 A. Yes.

14 Q. And when you were going to Dr. Tipu, did you begin to get
15 your prescriptions filled at Afam Pharmacy?

16 A. Yes.

17 Q. And where was that in relation to Dr. Tipu?

18 A. Its location?

19 Q. Well, previously what was the location?

20 A. On Church Avenue.

21 Q. And was it right next-door to Afam Pharmacy?

22 A. Yes.

23 Q. And did you deal with Danny Gohari at the time?

24 A. Yes.

25 MS. ESTES: Objection, leading.

GB7LGOH3

Harewood - direct

1 THE COURT: Yes. I'll allow the last question. But
2 after this, no more leading.

3 MR. KEHOE: Yes, your Honor.

4 Q. And do you see Danny Gohari here in the courtroom?

5 A. Yes.

6 Q. And, Danny, stand up. The gentleman standing up here?

7 A. Yes.

8 THE COURT: Identification is duly noted.

9 MR. KEHOE: Thank you, your Honor.

10 Q. How long did you deal with Mr. Gohari?

11 A. For about seven years, eight years, approximately.

12 Q. Ms. Harewood, did there come a time when Mr. Tipu moved his
13 office away from Church Avenue?

14 A. Yes.

15 Q. And did you base, even after Dr. Tipu left, did you
16 continue to go to Danny Gohari's pharmacy to fill your
17 prescriptions?

18 MS. ESTES: Objection, leading.

19 THE COURT: Well, it clearly is leading, but I will
20 allow it to move things along. But I caution counsel again not
21 to lead. But I'll allow this question.

22 Is the answer yes?

23 THE WITNESS: Yes.

24 Q. And why did you do that?

25 A. Because I was comfortable with the pharmacy, with the

GB7LGOH3

Harewood - direct

1 people there.

2 Q. And how long did it take you to get by bus from your house
3 to Mr. Gohari's pharmacy?

4 A. Not sure by bus because I normally drive.

5 Q. And how long of a drive is it?

6 A. About ten minutes.

7 Q. Now, during the course of your years with Mr. Gohari, did
8 you get his cell phone number?

9 A. Lately, yes, I did lately.

10 THE COURT: Excuse me. When you say lately,
11 approximately when?

12 THE WITNESS: About eight or nine months ago.

13 Q. Now, Ms. Harewood, the prescriptions at Afam Pharmacy, did
14 you pick prescriptions up for other people?

15 A. Yes, I did.

16 Q. And who did you pick them up for?

17 A. I picked up for my dad, my kids, and one friend of mine
18 who's my landlord. He's elderly.

19 Q. What's his name?

20 A. Patrick Connell.

21 Q. You picked up because he was elderly?

22 A. Yes. And he doesn't see well, he doesn't hear well, so I
23 assist him sometimes.

24 Q. Did Mr. Gohari ever ask you for any identification when you
25 were picking up for these people?

GB7LGOH3

Harewood - direct

1 A. No.

2 Q. Now, did your father also get his prescriptions filled?

3 A. Yes.

4 Q. Did Mr. Gohari ever advise you concerning getting a low
5 copay?

6 THE COURT: He's a landlord who doesn't see well or
7 hear well?

8 THE WITNESS: Yes.

9 THE COURT: How does that distinguish him from any
10 other landlord?

11 MR. KEHOE: Judge, I don't want to take that one on.

12 THE COURT: Go ahead, counsel.

13 No, not a serious question.

14 THE WITNESS: Okay.

15 THE COURT: Go ahead, counsel.

16 MR. KEHOE: No real estate lawyers in here, Judge.

17 Q. Going back to that, your father was also going to the
18 pharmacy?

19 A. My dad doesn't really go to the pharmacy as such. I'm the
20 one that normally go. He probably went there twice, you know.

21 Q. Now, was there a discussion with Mr. Gohari about getting a
22 lower copay?

23 MS. ESTES: Objection, leading and hearsay.

24 THE COURT: Well, I think that question I'll allow and
25 it may have to be leading here to avoid the problem we

GB7LGOH3

Harewood - cross

1 discussed outside the presence of the jury.

2 So is the answer to that yes or no?

3 Do you want the question reread?

4 THE WITNESS: Yes, please.

5 (Record read)

6 THE COURT: Just answer that yes or no. Was there
7 such a discussion?

8 THE WITNESS: Yes.

9 THE COURT: Okay.

10 Q. Did he -- this is just for the fact it was said -- did he
11 tell you to do something to get the lower copay?

12 A. Well, it depends on the medication. Sometimes it would
13 require him to call the doctor to change it, you know.

14 Sometime medication is just over the counter that he can handle
15 it himself.

16 Q. On occasion when you were dealing with Mr. Gohari, did he
17 waive the copay?

18 A. It depends on the cost.

19 THE COURT: Sustained. Sustained.

20 MR. KEHOE: Your Honor, thank you. I have no further
21 questions.

22 THE COURT: Counsel.

23 CROSS-EXAMINATION

24 BY MS. ESTES:

25 Q. Good morning.

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Harewood - cross

1 A. Good morning.

2 Q. So, Ms. Harewood, you picked up medications for your
3 father, right?

4 A. Yes.

5 Q. And he has the same last name as you?

6 A. Yes.

7 Q. So that's Hollister Harewood?

8 A. Yes.

9 Q. And he's received oxycodone before, right?

10 A. Yes.

11 Q. Why did he need oxycodone?

12 A. He had a surgery done and that's what the hospital gave
13 him, Methodist Hospital.

14 Q. And he only received it a couple of times, right?

15 A. One time only.

16 Q. One time only?

17 A. I think it's one time, yeah.

18 Q. And it was only a five-day supply?

19 A. I can't remember exactly how many days it was, but he
20 did -- I did pick up that for him, oxycodone, yes.

21 Q. And you testified that you've picked up for relatives,
22 right?

23 A. My dad and my kids. Those are my relatives.

24 Q. How old are your kids?

25 A. Fifteen, ten, 12.

GB7LGOH3

Mayers - direct

1 Q. And none of your kids were getting oxycodone, right?

2 A. No.

3 Q. And do they have your same last name?

4 A. No, only one.

5 Q. One has your last name?

6 A. Yeah.

7 Q. And you testified that you picked up for your landlord as
8 well, right?

9 A. Yes.

10 Q. And does he have your same address?

11 A. Yes, he does.

12 Q. And he wasn't getting oxycodone, right?

13 A. No.

14 MS. ESTES: No further questions.

15 THE COURT: Anything else?

16 MR. KEHOE: No, thank you.

17 Thank you very much, Ms. Harewood.

18 THE COURT: Thank you. You may step down.

19 (Witness excused)

20 THE COURT: Please call your next witness.

21 MR. KEHOE: The defense calls Cheryl Mayers,

22 M-A-Y-E-R-S.

23 CHERYL MAYERS,

24 called as a witness by the Defendant,

25 having been duly sworn, testified as follows:

GB7LGOH3

Mayers - direct

1 DIRECT EXAMINATION

2 BY MR. KEHOE:

3 Q. I'm not sure if it's morning or afternoon, Ms. Mayers, but
4 whatever it is, good morning or good afternoon.

5 A. Good morning.

6 Q. Ms. Mayers, where do you live?

7 A. In Brooklyn.

8 Q. What general area in Brooklyn?

9 A. Canarsie area.

10 Q. How long have you lived in the Canarsie area?

11 A. About 20 years.

12 Q. I understand you're not employed right now, but what did
13 you do previously?

14 A. Previously I was working in banking, Immigrant Savings
15 Bank, about 22 years. I got let go back in 2008. And then I
16 was working for Direct Buy, that's about two and a half years,
17 and that went under. And then I decided to do home care.

18 Q. And is that what you're doing now?

19 A. Yes.

20 Q. During the last several years have you had some physical
21 issues?

22 A. Yes, I did.

23 Q. And can you explain to the Court and jury what those were?

24 A. I had just recently, also, just had a surgery in January.
25 I had one in May and one in August. In the past also I had

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Mayers - direct

1 several different surgeries. I went to there's a clinic on
2 Church Avenue that I used to go to, but that's now formally
3 closed.

4 Q. Would that be Dr. Tipu's pharmacy, excuse me, clinic?

5 A. Yes.

6 Q. And what did you go to Dr. Tipu's clinic?

7 A. I'm also diabetic, so I also went to the diabetic doctor
8 there. I used to go to the GYN, as well, and the foot doctor,
9 as well.

10 Q. And after going to that doctor did you get some
11 prescriptions that you needed filled?

12 A. Yes. And I used to go right next-door to the pharmacy
13 because it was convenient for me and it was right adjoined to
14 each other.

15 Q. And was the gentleman working there, was that Mr. Gohari?

16 A. Yes.

17 Q. And, obviously, do you see him in the courtroom here?

18 A. Yes. Yes.

19 THE COURT: Duly noted.

20 Q. Now, did there come a time, Ms. Mayers, when Dr. Tipu moved
21 his offices?

22 A. Yes.

23 Q. And did you continue to go to Dr. Tipu?

24 A. Yes.

25 Q. And after he moved his office, when you got your

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Mayers - direct

1 prescriptions, did you continue to go to Mr. Gohari's pharmacy?

2 A. Yes, because it was convenient for me.

3 Q. And going to his pharmacy?

4 A. Yes.

5 Q. And so you didn't go near Dr. Tipu, you went back to his?

6 A. I went back to the pharmacy right on Church Avenue.

7 Q. Now, was there ever an occasion when you didn't have enough
8 money to pay for a prescription?

9 A. Yes.

10 Q. And what in fact transpired when you didn't have any money
11 to pay for the prescription?

12 MS. ESTES: Objection.

13 THE COURT: I'm sorry, forgive me. When there's an
14 objection I have to rule.

15 I'm going to sustain the objection unless counsel
16 wants a side bar.

17 MR. KEHOE: If I could rephrase the question.

18 Q. When you didn't have enough money, did you have a
19 conversation, without telling us what was said, did you have a
20 conversation with Mr. Gohari about it?

21 A. Yeah --

22 THE COURT: No. I'm still -- the answer is yes, but
23 put another question.

24 Q. And after you had that conversation, did you absolutely,
25 positively have to pay him that day for your prescription?

GB7LGOH3

Mayers - direct

1 THE COURT: Sustained.

2 Q. Did you get your prescription?

3 A. Yes.

4 Q. Thereafter, next day, sometime down the line, did you then
5 return to the pharmacy with the money?

6 A. Yes.

7 Q. Now, during your period of time when you were with
8 Mr. Gohari, did you have any conversations with Mr. Gohari --

9 MR. KEHOE: And most respectfully, Judge, if I could
10 have a little leeway on the leading so I can get through this
11 without triggering, your Honor, some of your Honor's orders.

12 Q. -- did you have a conversation with Mr. Gohari about
13 getting cheaper medication for you?

14 THE COURT: Just answer that yes or no.

15 A. Yes.

16 Q. And did he suggest that you talk to your doctor about a
17 cheaper medication?

18 A. Yes.

19 Q. And did you do that?

20 A. Yes.

21 Q. And was the medication cheaper?

22 A. Yes.

23 Q. Now, in picking up your medication -- again, your Honor,
24 just a tad bit of leeway here -- when you would ask for a
25 prescription, was there ever a time when the entire

GB7LGOH3

Mayers - direct

1 prescription was not filled and you had to come back?

2 A. Yes.

3 MS. ESTES: Objection.

4 THE COURT: Ground?

5 MS. ESTES: Your Honor's prior ruling on specific good
6 acts.

7 THE COURT: I don't think this one came up, but if the
8 question is what's the relevance, I'll hear counsel at the side
9 bar.

10 (Continued on next page)

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Mayers - direct

1 (At the side bar)

2 THE COURT: So what is she going to say?

3 MR. KEHOE: What she's going to say is that she
4 returned back. Obviously, I have to wend my way through the
5 hearsay aspect of it, but she didn't get the full and then she
6 came back. She got a phone call and based on what she was
7 told, she came back. One of the issues --

8 THE COURT: What's the relevance?

9 MR. KEHOE: The issue is it goes to Cabrera's comment
10 that when he didn't get the full prescription that Gohari
11 pocketed the difference. That was the suggestion brought up by
12 counsel on direct examination of Mr. Cabrera. And here is a
13 perfectly innocent explanation as to what in fact transpired in
14 her personal experience. It rebuts that issue.

15 MS. ESTES: Your Honor, what happened with her has no
16 relevance to what happened with Mr. Cabrera.

17 THE COURT: I don't remember what Mr. Cabrera said in
18 that regard, so you have to fill in.

19 MS. ESTES: Mr. Cabrera said with respect to some of
20 his patients, they didn't always get the medication, but we've
21 never said this was the case with every person.

22 THE COURT: Didn't get medication at all?

23 MS. ESTES: He said there were a couple that they
24 didn't get medication at all and a couple where the pills were
25 short.

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Mayers - direct

1 THE COURT: And the pills were short meaning that
2 they -- he just didn't put in enough without telling the
3 patient or that the patient was told it's less than the full
4 amount?

5 MS. ESTES: I don't think the testimony made clear.

6 THE COURT: Okay.

7 MS. ESTES: Just that patients were missing
8 medication.

9 THE COURT: So assuming he did tell them, so I take it
10 what counsel is saying, what defense counsel is saying is there
11 are circumstances where one might have to come back to get the
12 full prescription filled so that what Mr. Cabrera had described
13 in part might have appeared innocent rather than guilty.

14 MR. KEHOE: Correct. That's right, Judge.

15 MS. ESTES: Your Honor, there was follow-up testimony
16 from Mr. Cabrera that he went back to the defendant and the
17 defendant said, essentially, this is what you get.

18 MR. KEHOE: That comes from Mr. Cabrera, hardly the
19 bastion of credibility.

20 THE COURT: That's a different question. What he's
21 describing then is not rebutted by this circumstance. So,
22 sustained.

23 MR. KEHOE: Judge, if I may, Judge, this is an
24 instance that happened once. He said, he maintained that on
25 several occasions, he said he complained once. And he

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Mayers - direct

1 testified on direct examination that on many occasions that it
2 was short. The issue here is directly relevant to say if
3 you're short, you just go back and get the rest because they
4 don't have it. It's directly pertinent to what they tried to
5 bring out with this guy and I guarantee you, Judge, in final
6 argument, counsel is going to argue this stuff.

7 There's an innocent explanation. If he doesn't have
8 enough, he calls him. He just goes back. He gets a phone
9 call. Don't tell us the phone call. Did you go back and get
10 the rest of your prescription? Yes. It's highly pertinent,
11 especially if they argue what counsel just said they're going
12 to argue.

13 THE COURT: If Mr. Gohari says to Mr. Cabrera this is
14 all you get, that, of course, is probative of that they have a
15 conspiratorial relationship because an honest pharmacist would
16 not have done that. But what you're saying is that on some
17 other occasion with a non-coconspirator, a situation arose in
18 which he filled part of a prescription and then filled part
19 another part of it later.

20 MR. KEHOE: Yes.

21 THE COURT: I don't see how that rebuts. This is only
22 really being offered, as far as I can tell, for impeachment of
23 Cabrera.

24 MR. KEHOE: Judge, it's also a rebuttal of the entire
25 scenario laid out by counsel that if you get less than the full

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Mayers - direct

1 script, Danny Gohari is taking that money and keeping it.

2 THE COURT: I disagree. When you have things like
3 that were testified by the government's pharmacy expert on
4 things that a reasonable pharmacist would not have done, then
5 of course you have the right to rebut it, as most of the last
6 few witnesses have done. But this was not something raised by
7 their expert. This was something only raised and in ways that
8 are really quite distinguishable from your situation with this
9 witness by Mr. Cabrera. It's extrinsic evidence offered to
10 impeach a prior witness and that's within the discretion of the
11 Court. The Court thinks it's not materially relevant and I'm
12 going to exclude it.

13 (Continued on next page)

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Mayers - cross

1 (In open court)

2 MR. KEHOE: Ms. Mayers, thank you very much and have a
3 good afternoon. No further questions.

4 THE COURT: Was there anything else for this witness?

5 MR. KEHOE: No, your Honor.

6 MS. ESTES: Yes, your Honor, just briefly.

7 CROSS-EXAMINATION

8 BY MS. ESTES:

9 Q. Ms. Mayers, good morning.

10 A. Good morning.

11 Q. So you testified earlier that --

12 THE COURT: Well, that's an assumption that's not
13 supported by the facts in evidence.

14 MS. ESTES: My apologies, your Honor.

15 Q. Ms. Mayers, you testified earlier that you were in home
16 care; is that right?

17 A. That's correct.

18 Q. How long have you been in home care?

19 A. About two years.

20 Q. And how did you get involved in home care?

21 A. After I had got let go from my job and Direct Buy, I
22 decided to go do the certificate and I started home care.

23 Q. So you have a certificate in home care?

24 A. Yes.

25 Q. Are you licensed?

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Mayers - cross

1 A. Yes.

2 Q. And you're registered as a home healthcare aide?

3 A. That's correct.

4 Q. And that registration is available online; is that right?

5 A. I believe so.

6 Q. So you can be looked up in an online registry?

7 A. Yes.

8 Q. And your number is 417778; is that right?

9 A. What number is that?

10 Q. Your registration number.

11 A. I don't know the number.

12 Q. But did you attend a training program?

13 A. I did. Americare in Brooklyn.

14 Q. And information about your training as a home health aide
15 is available online, as well, right?

16 A. I believe. I did it with Americare, so I believe they
17 probably have online.

18 Q. So a potential employer could look up online that you're in
19 home care, right?

20 A. Yes.

21 Q. And a pharmacist could look up online that you're in home
22 care, right?

23 A. I don't know.

24 MS. ESTES: One moment, your Honor.

25 No further questions.

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Mayers - redirect

1 THE WITNESS: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. KEHOE:

4 Q. Ms. Mayers, it's a fact that a lot of people in Brooklyn
5 where you are that are helping out who are invalid or sheltered
6 or can't get out themselves, can't they?

7 A. Yes.

8 MS. ESTES: Objection.

9 THE COURT: Sustained.

10 Q. You were just asked questions about home healthcare. Are
11 there not a lot of people in and around Brooklyn helping people
12 who can't get out?

13 A. Yes.

14 MS. ESTES: Objection.

15 MR. KEHOE: No further questions.

16 THE COURT: I'll allow it.

17 You may step down. Thank you very much.

18 THE WITNESS: Thank you.

19 (Witness excused)

20 THE COURT: Call your next witness.

21 MR. KEHOE: Yes, your Honor. Michelle Rodgers.

22 MICHELLE RODGERS,

23 called as a witness by the Defendant,

24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

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Rodgers - direct

1 BY MR. KEHOE:

2 Q. Ms. Rodgers, where do you live, ma'am?

3 A. Brooklyn.

4 Q. And whereabouts? You don't have to give the address.

5 A. On Eastern Parkway, Crown Heights.

6 Q. How long have you lived there?

7 A. Say over 15 years.

8 Q. And what do you do for a living?

9 A. Home health aide.

10 Q. What is a home health aide, what does that mean?

11 A. Home health aide do a lot of stuff -- picking up
12 medications, cooking, doing shopping, administer medications,
13 you know, setting out your patient pills, helping them take a
14 bath or whatever you have to do.

15 Q. You noted that you pick up medications for your patients,
16 your clients?

17 A. Yes.

18 Q. And have you done that on occasion?

19 A. Yes.

20 Q. And -- withdrawn.

21 It was for your particular patients; is that right?

22 A. Yeah, yeah.

23 Q. Now, did there come a time when you were getting -- you
24 individually, did you have some issues where you had to get
25 prescriptions filled?

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Rodgers - direct

1 A. Yeah. I had to get my prescription filled for my daughter;
2 she was having ear problem. And I sent it in to Danny and the
3 prescription was like too strong because of her age and Danny
4 called me and said the prescription was a little bit strong.

5 MS. ESTES: Objection.

6 THE COURT: No.

7 MR. KEHOE: If I may, Judge?

8 THE COURT: Yes.

9 Q. Without telling us about the conversation, did you have a
10 conversation with Mr. Gohari about the prescription?

11 A. Yes.

12 Q. And thereafter did you change the prescription?

13 A. Yes.

14 Q. And did it work?

15 A. Yes.

16 Q. Now, you were initially going to a -- which doctor were you
17 originally going to, was it near Mr. Gohari?

18 A. Yes, there was a doctor near him. And then after that, I
19 went to a different doctor, but I still send my prescription to
20 him.

21 Q. Okay. So you went to a different doctor but you still went
22 back to --

23 A. Yes.

24 Q. Was that a greater distance?

25 A. Yeah, it was greater.

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Rodgers - redirect

1 Q. Now, you mentioned that you pick up for your patients
2 prescriptions. Do you also pick up for friends and neighbors?

3 A. Yeah, I pick up, yeah.

4 Q. Is that yes?

5 A. Yes.

6 MR. KEHOE: May I have one moment, your Honor?

7 THE COURT: Yes.

8 MR. KEHOE: Your Honor, I have no further questions
9 for Ms. Rodgers. Thank you very much.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. ESTES:

13 Q. Ms. Rodgers, as a home health aide, how many people you do
14 typically care for at a time?

15 A. One.

16 Q. Just one?

17 A. Mm-hmm.

18 MS. ESTES: No further questions.

19 THE COURT: Thank you very much.

20 MR. KEHOE: If I could have redirect on that?

21 THE COURT: Yeah.

22 REDIRECT EXAMINATION

23 BY MR. KEHOE:

24 Q. The type of home health care you do, you're actually in the
25 apartment full time with the patient, aren't you?

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1 A. Yes, full time, five days a week with the patient.

2 Q. Full time?

3 A. Full time.

4 MR. KEHOE: Thank you very much. I have no further
5 questions.

6 THE COURT: Thank you very much. You may step down.

7 (Witness excused)

8 THE COURT: Call your next witness.

9 MR. KEHOE: Your Honor, the defense rests.

10 THE COURT: Okay. Counsel come to the side bar.

11 (Continued on next page)

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1 (At the side bar)

2 THE COURT: How long does the government want for
3 summations, for its two summations combined?

4 MR. RICHMAN: An hour for initial summation, your
5 Honor.

6 MS. ESTES: Twenty, 25 minutes.

7 MR. RICHMAN: An hour 25 minutes combined.

8 THE COURT: How long does defense counsel want?

9 MR. KEHOE: The same amount of time, Judge.

10 THE COURT: So I'll give you the choice. We could
11 either have summations right after lunch today, or we could
12 have them first thing tomorrow.

13 MR. KEHOE: I vote for the morning, Judge.

14 MS. ESTES: That's fine.

15 MR. RICHMAN: Fine with the government, your Honor.

16 THE COURT: So I will excuse the jury. I'm going to
17 get you over lunch or at the end of lunch a proposed charge and
18 we'll have a charging conference say around 2:30 or so to give
19 you some time to look over my charge.

20 MR. KEHOE: Yes, your Honor.

21 THE COURT: And we'll take up right now after I excuse
22 the jury any further motions that anyone has.

23 Okay. Very good.

24 MR. BACHNER: Judge, we're going to get that hard
25 copy, the charge?

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1 THE COURT: Yeah. Why don't you all come back to the
2 courtroom at 2 o'clock and I will get everyone hard copies then
3 of the charge and then we'll have the charge conference at 2:30
4 and I'll give you a chance.

5 MR. BACHNER: Thank you, Judge.

6 (In open court)

7 THE COURT: So, ladies and gentlemen, that concludes
8 the evidence in this case. The next thing we do is counsel
9 gives closing arguments and then I give you my instructions of
10 law and then the case is yours to deliberate. Counsel have
11 requested and I think it's reasonable that they have until
12 tomorrow to prepare their closing arguments. So we're going to
13 excuse you for today.

14 Now, tomorrow, I understand from rumor and hearsay
15 that there's an election tomorrow. So in order to make sure
16 that you have a chance to vote before you come here, I think
17 we'll start at 10 o'clock. Does that work for everyone? So
18 the courthouse will be sort of closed. Actually, a whole bunch
19 of judges, including myself, will be continuing on with
20 matters, but we've told security that you'll be here tomorrow.
21 If you run in, if you see any sign, courtroom closed, just
22 ignore it, but go through the normal security. But you may
23 want to allow an extra five minutes or so just because we won't
24 have the full courthouse staff tomorrow.

25 So the schedule is this. We will reconvene at

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1 10 o'clock tomorrow. We will have closing arguments which will
2 take us down to about 1 o'clock. You'll then have your normal
3 lunch. You'll then have my instructions of law, which take
4 about half-hour, from two to 2:30, and then you'll start your
5 deliberations. We'll only sit tomorrow until four. So if you
6 don't complete your deliberations, you'll come back at
7 9 o'clock on Wednesday.

8 I mention all that so you can plan ahead, but also,
9 alternate juror No. 2, I think that obviates the problem that
10 you had. I'll get back to you if there's any problem, but I
11 don't think there will be.

12 So it's actually cold, but it's a lovely day. You can
13 go home. If I were you, I'd wander around the neighborhood,
14 you know, buy some nice Chinese food, whatever you want. Have
15 a very good day. Have a very good evening. We'll see you at
16 10 o'clock tomorrow.

17 (Jury not present)

18 THE COURT: All right. Please be seated.

19 At the last break we got the following note. I'll
20 just read it. But as you'll see in a minute, it's mooted by
21 the schedule.

22 This is from alternate juror No. 2. Your Honor, next
23 Monday, November 14, I have my son's parent/teacher conference,
24 first grade. I've arranged for the conference to happen in the
25 earliest possible slot, 8:30 a.m., and it will be concluded no

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1 later than 9 a.m. The school is in Brooklyn Heights and if I
2 can attend, I can be back for jury service no later than
3 9:30 a.m. It is the only parent/teacher conference of the
4 semester and the primary opportunity for us to get feedback
5 from my son's teacher. If it would be possible to be at trial
6 at 9:30 a.m. so that I can attend my son's conference, I would
7 be greatly appreciative. Thank you for your time and
8 consideration. Avi Luft, alternate juror No. 2.

9 So as you know, we will excuse the alternates subject
10 to recall. But we will excuse the alternates when the jury
11 begins its deliberations tomorrow, so this is obviously moot,
12 but I wanted to place it on the record. I'll give it to my
13 courtroom deputy so it's duly marked.

14 Okay. Any motions that defense counsel?

15 MR. KEHOE: We're renewing our Rule 29 motion, your
16 Honor, with all the previous arguments given at the close of
17 the defense case on the sufficiency of the evidence for a
18 conviction.

19 THE COURT: You would have been negligent not to have
20 made that motion and I would have been equally negligent not to
21 deny it. Very good.

22 Counsel needs to be back in the courtroom at two. The
23 defendant is welcome to come to the charging conference but
24 he's not required. It's totally his option after consultation
25 with counsel. But we'll have the charging conference beginning

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1 at 2:30.

2 MS. ESTES: Thank you, your Honor.

3 (Luncheon recess)

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AFTERNOON SESSION

2:50 p.m.

THE COURT: The record will reflect that counsel received the proposed charge at 2:15, so I have given them until now, which is almost 2:50, to look it over.

Beginning with the general instructions 1 through 9, any objections, suggestions, or additions to 1 through 9? First from the government.

MS. ESTES: No, your Honor.

THE COURT: From the defense?

MR. KEHOE: No, your Honor.

THE COURT: Turning to 10 and 11, the summary and then the first of the two counts, any objections, suggestions, or additions with respect to 10 and 11? First from the government.

MS. ESTES: Yes, your Honor. On page 24 we noticed what we think might be a typo.

THE COURT: A typo? My gosh. It must be my law clerk. Where is that?

MS. ESTES: It's in the first paragraph, the sentence that starts "For example, if you find that the defendant was aware of the high probability that the defendant knew."

THE COURT: Yes. Thank you very much. Strike "that the defendant knew."

MS. ESTES: Yes, your Honor. Thank you.

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1 THE COURT: Thank you. Anything else on those two
2 charges?

3 MS. ESTES: Not from the government, your Honor.

4 THE COURT: Anything from the defense?

5 MR. KEHOE: Yes, your Honor. This is the conscious
6 avoidance instruction. But the government didn't try this as a
7 conscious avoidance case. Their case from the very outset has
8 been one of direct knowledge by the defendant.

9 THE COURT: I considered that, but I think they
10 actually argued both. They argued that Mr. Cabrera is saying
11 it's a direct case, but then they also argued that there were
12 all these red flags flying, although they didn't use that term.

13 MR. KEHOE: If I may, Judge?

14 THE COURT: Yes.

15 MR. KEHOE: If your Honor harkens back to a week ago
16 today to counsel's opening statement, it had always been that
17 Mr. Gohari knew what Cabrera was doing and the conspiracy was a
18 direct conspiracy. There has never been any inkling that this
19 was a conscious avoidance type of issue. The way that counsel
20 lead this information from Mr. Winsley was that there was other
21 evidence of the improper conduct of this defendant. But it has
22 always been a direct knowledge case.

23 THE COURT: I'll hear from the government in a minute.
24 Mr. Winsley's testimony was at the time we had the Daubert
25 hearing and I think consistently both that it corroborates

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1 Cabrera because it shows the defendant acting or failing to act
2 in circumstances where a good faith pharmacist would act but
3 also was independently a conscious avoidance claim.

4 My law clerk has the opening statements. I don't know
5 of any requirement that they put that in their opening
6 statements. The question is whether they fairly apprised the
7 defense that that would be one of their theories.

8 MR. KEHOE: Clearly, Judge, you have pinpointed what
9 Winsley's testimony was, to be corroborative of the testimony
10 of Cabrera. It was not an independent basis, most
11 respectfully, of conscious avoidance to warrant a charge. The
12 government has never, ever --

13 THE COURT: Forgive me. Conscious avoidance in a
14 conspiracy context is a little bit different. In other words,
15 they are not charging your client with any substantive crime.

16 MR. KEHOE: Yes.

17 THE COURT: They are claiming that he entered into an
18 agreement with one or more co-conspirators. The conscious
19 avoidance comes up in this context of his knowledge of the
20 specific object, and that is the way I have charged it.

21 For example, if I entered with you into a conspiracy
22 in which we agreed that I would ignore or overlook, in return
23 for your giving me high-end prescriptions, allow you to fill
24 prescriptions that otherwise would have been something I would
25 have looked at but I didn't know whether what you had in mind

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1 was a prescription for oxycodone or a prescription for some
2 other controlled substance, then the government would be
3 entitled to a charge which is essentially what the conscious
4 avoidance charge is here: that he would still be guilty of
5 conspiring to distribute oxycodone as opposed to some other
6 controlled substance because he purposely turned away from
7 learning what the specific drug was. I think that is all that
8 is charged here.

9 MR. KEHOE: If I may, Judge, that, with all due
10 respect, has not been the presentation of evidence in front of
11 this Court. There has never been advancement by the government
12 of the theory that there was a conspiracy to do some type of
13 drugs and that Mr. Gohari just looked the other way while Mr.
14 Cabrera completed the other steps in the conspiracy. This has
15 always been a firm agreement by Mr. Cabrera with Mr. Gohari,
16 that we had an agreement to do X, and that in support of that
17 Mr. Winsley comes in and says you see all these things that he
18 didn't do and that he should have done, that shows that what
19 Cabrera is saying is true.

20 THE COURT: Let's hear what the government has to say.
21 I'm open to persuasion on this particular matter.

22 MS. ESTES: Your Honor, we specifically elicited
23 testimony from Mr. Winsley and also from Mr. Cabrera that the
24 defendant was looking the other way. For instance, there was a
25 line of questioning where we asked Mr. Cabrera if the defendant

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1 asked about any of the patients' pain. For every one of those
2 patients he said no. There has also been a lot of evidence
3 about whether the defendant met the patients. The testimony
4 was no, he did not meet the patients. That is all consistent
5 with a conscious avoidance instruction and it is consistent
6 with Winsley's testimony, which is intended to show that a
7 reasonable pharmacist would have known that something was going
8 on here.

9 MR. KEHOE: If I may, Judge?

10 THE COURT: Yes.

11 MR. KEHOE: With all due respect, that is absolutely
12 not consistent with a conscious avoidance theory. Their theory
13 has always been and continued to be throughout all his direct
14 examination that Gohari was in cahoots with Cabrera, and as
15 evidence of that, case point one Mr. Winsley: all of these
16 cautionary steps --

17 THE COURT: Let me interrupt for a second because I
18 think the government maybe did not fully understand the thrust
19 of defense counsel's position. Defense counsel is not arguing
20 that you can't put in evidence of the defendant turning away or
21 acting in an improper manner and all like that because that is
22 circumstantially consistent with the theory that he had an
23 agreement with Cabrera to distribute illegal drugs. You don't
24 need a charge for that. It's just another form of
25 circumstantial evidence? If you want, when I discuss

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1 circumstantial evidence, we can put in a sentence to that
2 effect.

3 But the charge you have asked for is a charge that
4 presupposes that there was not a fully formed, explicit
5 agreement between Cabrera and the defendant with respect to
6 what the object of the conspiracy was, and a conscious
7 disregard supplies that knowledge. I'm thinking that the
8 defendant may be right, that that was never argued at any
9 point.

10 MS. ESTES: Your Honor, may I have one minute?

11 THE COURT: Yes.

12 MS. ESTES: Your Honor, the government is permitted to
13 argue in the alternative that the evidence has established that
14 there has always been a relationship between the defendant and
15 Mr. Cabrera. Both sides have elicited testimony regarding that
16 relationship.

17 One theory would be that there was this relationship
18 but that the defendant maybe doesn't know where Mr. Cabrera is
19 distributing the oxycodone or the specifics of why it is
20 medically unnecessary, but that is because he is turning a
21 blind eye because he is getting these high-priced medications
22 as part of their arrangement. That was the entire point of Mr.
23 Winsley offering the testimony about all these red flags that a
24 reasonable pharmacist should have seen, also the testimony of
25 Sharon Auyeung that she told the defendant that she herself saw

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1 these red flags and that nonetheless he kept dispensing.

2 MR. KEHOE: Still, your Honor, with all due respect,
3 that is not indicative of a conscious avoidance issue. This
4 has been advanced by the United States in order to be
5 corroborative of this deal, this explicit deal that allegedly
6 took place we know Cabrera and Gohari.

7 There has never been any indication in any of the
8 questioning or anything presented by the United States that
9 there is a conscious avoidance or that Mr. Gohari turned a
10 blind eye to any of this. To the contrary, their position has
11 been that he was in it as a co-conspirator and part and parcel
12 of this agreement.

13 That's why Winsley's information was coming in,
14 because it is corroborative of this deal. There is nothing
15 advanced concerning a conscious avoidance defense or conscious
16 avoidance theory by the United States.

17 THE COURT: I'm going to think about this. I want to
18 go back and look at the record. I will let you know by
19 sometime early this evening at the very latest. In fact, I'll
20 send the final charge to both sides by email sometime early
21 this evening, and you will see my ruling on this issue.

22 MR. KEHOE: Your Honor, for the sake of time, the same
23 issue comes up on page 30.

24 THE COURT: In the next count?

25 MR. KEHOE: Yes, in the next count.

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1 THE COURT: Okay.

2 MR. KEHOE: Same argument. I can make the same
3 argument again if you want to hear it.

4 THE COURT: I would cherish that, but I will pass that
5 up.

6 MR. KEHOE: You will forgo the pleasure?

7 THE COURT: That's right. Any other objections to 10
8 or 11 from the defense?

9 MR. KEHOE: No, your Honor. That was my objection.

10 THE COURT: Any objections other than the one that has
11 just been made to 12, the other count?

12 MR. KEHOE: Other than what I just made, Judge, no.

13 MS. ESTES: Your Honor, we did have one brief comment
14 on page 30.

15 THE COURT: Yes.

16 MS. ESTES: In the first full paragraph it says, "For
17 example, if you find that the defendant was aware of the high
18 probability that Gilberto Cabrera was submitting requests to
19 Medicaid."

20 THE COURT: Yes.

21 MS. ESTES: The defendant would be the one submitting
22 requests to Medicaid, the pharmacy.

23 THE COURT: I see what you are pointing out. If I
24 keep it at all, I will reword it because it is clearly wrong in
25 referring to Cabrera.

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1 MS. ESTES: Thank you, your Honor.

2 THE COURT: I only put in the venue charge because the
3 defense is entitled to it and this case is I suppose a little
4 bit different from many in that everything focused on Brooklyn,
5 which for some fluke of history is not part of the Southern
6 District of New York. On the other hand, I don't know if there
7 is really an issue on venue. If the defense wants it in, I'll
8 keep it in.

9 MR. KEHOE: We want it in, Judge.

10 THE COURT: Okay. Any objections to the concluding
11 instructions 14 and 15?

12 MS. ESTES: No, your Honor.

13 MR. KEHOE: Your Honor, my only question, and I didn't
14 know if I saw it or if I missed it, is with regard to the tapes
15 as opposed to the transcripts. I know your Honor gave the
16 instruction before that the tapes themselves are the evidence
17 and the transcripts are just an aid to the jury. I don't know
18 if your Honor lets this go based on your prior instructions to
19 the jury.

20 THE COURT: Do you want something in there? They knew
21 that from the instruction I gave them before, but it is not
22 something I want to artificially exclude if you really want it
23 in there.

24 MR. KEHOE: It would be helpful, I believe, if you
25 would put it in there.

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1 THE COURT: All right, I will put it in someplace in
2 the final instructions, something about that.

3 MS. ESTES: Your Honor, if you would like, the
4 government could point to specific parts of the record where we
5 believe the evidence supports a conscious avoidance
6 instruction. We are happy to provide a letter to the court
7 noting that.

8 THE COURT: That's fine as long as you do it by no
9 later than 4:30. And if the defense wants to respond to that
10 letter, they would need to do so by 5:30.

11 MS. ESTES: Yes, your Honor.

12 THE COURT: I'll hold off to then to make the
13 decision. Anything else about any aspect of the charge
14 whatsoever?

15 MR. KEHOE: Just one thing for the record, Judge.

16 THE COURT: Yes.

17 MR. KEHOE: I trust that your Honor reviewed our
18 copious jury instructions.

19 THE COURT: I did. To the extent they are not here,
20 they are deemed to have been denied in whole or in part. You
21 have that for the purpose of any appeal.

22 MR. KEHOE: Yes, your Honor.

23 THE COURT: The same goes for the government. Any
24 problems with the verdict form?

25 MS. ESTES: No, your Honor.

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1 MR. KEHOE: No, your Honor.

2 THE COURT: Anything else we need to discuss?

3 MS. ESTES: No, your Honor.

4 MR. KEHOE: I don't believe so, Judge.

5 THE COURT: Remind me. I know you told me at the side
6 bar. How is the government dividing its two summations?

7 MS. ESTES: I believe about an hour for one and about
8 20 minutes for the other.

9 THE COURT: All right. Did we say at the side bar an
10 hour and 20 for each side or an hour and 25?

11 MR. KEHOE: I said an hour and a half, Judge, and I
12 thought they were getting an hour and a half too.

13 THE COURT: An hour and a half is fine. What that
14 means is that we will go without a break because we are
15 starting at 10:00 and they need to have lunch at 1 o'clock.

16 I think that's everything. To confirm: If the
17 government wishes, it will send me a letter, which you can send
18 by email, no later than 4:30; if the defense wishes, they will
19 send me a response by email no later than 5:30; and I will send
20 to you the final charge by no later, say, than 8 o'clock.
21 Thanks very much.

22 (Adjourned to 10:00 a.m., November 8, 2016)

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GOVERNMENT EXHIBITS

Exhibit No.	Received
919740
921742

DEFENDANT EXHIBITS

Exhibit No.	Received
81, 82, 83, 84, 85, 86, 87, 88, 89, 91, . . .	755
and 92	
144777